Resolutions

AND

DECISIONS

OF

Divers Practical Cases of Conscience in continual Use amongst men,

Very necessary for their Information and Direction.

In foure Decades.

By I. H. D. D. B. N.

LONDON,

Printed by M. F. for Nath. Butter in Curfiters Alley, and are to be fold by Humphrey Mosley, Abel Roper, and Iohn Sweeting. 1649. VERA EFFIGIES REVERENDI DONI IOSEPHI HALL NORWICI EPISCOPI



This Picture represents the Forme, where dwells A Mind, which nothing but that Mind excells. There's Wildome, Learning, Witt; there Grace Love Rule over all the rest enough to prove, family the froward Conscience of this Time, The Reverend Name of BISHOP is no Crime.

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Resolutions Lothe R Carlo Carlo Carlo colo colo Maurinos, 1 mines sales or Conten once Ami of the eater of Conference the septition of the state of the second as action is of moistich. ज्यांकियों (प्रस्ति मध्यावाका Caron timple symbol mer for a large

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To the Reader.



all Divinity that part is most whefull, which deter-

mines cases of Conscience; And of all cases of Conscience the Practicall are most necessary; as action is of more concernment then speculation: And of all practicals

Cases those which are of A 3 most

most common use are of so much greater necessity and benefit to be refolved, as the errors thereof are more univerfall, and therefore more prejudiciall to the fociety of mankinde: These I have selected out of many: and having turned over divers Casuists have pitch't upon those Decisions, which I hold most conformable to enlightened reason, and religion: formerimes I follow them, and fometimes I leave them for a better guide.

In

In the handling of all which, would I have affected that course which Seneca blames in his Albutius, to say all that might be spoken, I could easily have been more Voluminous, though perhaps not more fatisfactory. If these lines meet with different judgements; I cannot blame either my selfe, or them. It is the opinion of some Schoolmen (which feemes to be made good by that instance in the prophet A 4 Daniel)

Dan. 10.

12.1.

Daniel) that even the good Angels themselves may holily vary in the way, though they perfectly meet in the end: It is farre from my thoughts to buttude thefe my Refolutions as peremptory, and imagisteriall upon my Readers, I onely tender them fubmiffely, as probable advises to the simpler fort of Christians; and as matter of grave confure to the learned:) 1000

May that infinite
Goodnesse to whose
onely

defire to devote my selfe and all my poore indevours, make them as beneficiall, as they are wellmeant to the good of his Church, by the unworthiest of his servants

I. H. B. N.

Highamneare Norwich

Sept. 12.

1648.

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bound to make knowne to the buyen the faults of of that which he is about to fell?

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- fully buy those goods,

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they may be capable of a release.

5. Whom may we justly hold an heretick; and what is to be done in case of Heresie.

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- 6. Whether the lawes of men do bind the conscience; and how far we are tyed to their obedience.
- 7. Whether Tithes be a lawfull maintenance for Ministers under the Gospell; and whether men be bound to pay them accordingly.
- 8. Whether it be lawfull for Christians

Christians, where they find a country possessed by Savage Pagans and Infidells, to drive out the native inhabitants, and to seize upon and enjoy their lands upon any pretence what soever; and upon what grounds it may be lawfull so to do.

9. Whether I need in case of some soule sin committed by me to have recourse to Gods Minister for absolution; and what effect I may expect there-from.

10. Whether it be lawfull for

fessed Divine, that is (as we for distinction are wont to call him) for a meer Laick person, to take upon him to interpret Scripture.

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Cases Matrimoniall.

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- 2. Whether marriage lawfully made may admit of any cause of Divorce, save only for the violation of the marriage-bed by fornication, or adultery.
- 3. Whether after a lawfull Divorce for adultery, the innocent party may marry againe.
- 4. Whether the authority of a father may reach so far as to command or compell the child to dispose of himselfe in marriage where he shall appoint.
- 5. Whether the marriage of Cousens-

Cousens-german, that is, of Brothers and sisters children, be lawfull.

6. Whether it be necessary or requisite there should bee a witnessed contract, or espousalls of the parties to be married, before the solemnization of the marriage.

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- 7. Whether there ought to be a probabition, and forbearance of marriages, and marriage-duties for some times appointed.
- 8. Whether it be necessary that marriages should be cele-

celebrated by a Minister; and whether they may be valid, and lawfull without him.

cessity or use of thrice publishing the Contract of marriage in the Congregation before the celebration of it; and whether it be fit, that any Dispensation should be granted for the forbearance of it.

nade, may be annulled, couterly voided; and inwhat cases this may be done.

RESO-

RESOLUTIONS.

The first Decade.

Cases of Profit and Trafick.

CASE LARGO

Whether is it lawfull for me to raise any profit by the loane of money?



Ou may not expect a positive answer either way: Many circumstan-

ces are confiderable ere any thing can be determined.

First, Who is it that borrows: A poor neighbor that

Dec. I.

is constrained out of need and a merchant that takes up money for a freer trade for a rich man that layes it out upon superfluous occasions:

Deut.15.

If a poore man borrow out of necessity, you may not expect any profit for the loane: To the poorest of all we must give, and not lend: to the next ranke of poore we must lend freely: but if a man will borrow that money (which you could improve) for the enriching of himselfe; or out of a wanton expence, will be laying out that which might be otherwise usefull to you, for his mere pleasure, the case is different: For God hath not commanded

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afe I.

manded you to love any man more then your felfe; and there can be no reason why you should vaile your owne just advantage to another mans excesse.

Secondly, upon what termes doe you lend? whether upon an absolute compact for a fet increment, (what ever become of the principall) or upon a friendly trust to a voluntary satisfaction according to the good improvement of the fumme lent ! The former is not lafe, and where there hath beene an honest indevour of a just benefit dilappointed either by unavoydable casualty, or force, may not be rigorously urged, without manifest oppression.

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Dec. I.

The latter can be no other then lawfull: and with those that are truly faithfull and conscionable, the bond of gratitude is no lesse strong then that of law, and justice.

Thirdly, if upon an abfolute compact; is it upon
a certainty, or an adventure?
for where you are willing
to hazzard the principall,
there can be no reason but
you should expect to take
part of the advantage.

Fourthly, where the trade is ordinarily certaine, there are yet further confiderations to be had: to which I shall make way by these undeniable grounds.

That the value of moneys or other commodities is arbitrable

Case I.

bitrable according to the foveraigne authority and use of severall kingdomes and countries.

That whatsoever commodity is saleable, is capable of a profit in the loan of it; as an horse, or an oxe, being that it may be sold, may be let out for profit.

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rle Money it selfe is not only the price of all commodities in all civill Nations, but it is also, in some cases, a trassqueable commodity: the price whereof rises, and sals in severall countries upon occasion; and yeeldeth either profit or losse in the exchange.

There can be no doubt therefore but that money thus considered, and as it

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Dec.1.

were turned merchandise, may be bought and sold, and improved to a just profit.

But the maine doubt is, whether money merely confidered as the price of all other commodities, may be let forth for profit; and be capable of a warrantable increase. For the resolving whereof be it determined,

That all usury, which is an absolute contract for the

lawfull both by law naturall, and positive, both divine and humane.

Nature teacheth us that metals are not a thing capable of a superfectation; that no man ought to set a price on that which is not

his

Cafe 1:

his owne time: that the use of the stock once received, is not the lenders, but the borrowers; for the power, and right of disposing the principall, is by contract transferred for the time to the hands of him that receives it; so as he that takes the interest by vertue of such transferred doch but in a mannerly and legall fashion to the borrower.

How frequent the Scripture is in the prohibition of this practife, no Christian can be ignorant: And as for humane lawes raised even from the mere light of nature amongst Heathen Nations, how odious, and severely interdicted usurary contracts have been in all times, it appeares sufficiently

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Exod .22

Levit.25 36,37. Deut.23. 19,20. Neh.5.7.

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Neh. 5.7. Pfal. 15.5. Pro. 28.8. Ezec. 18.

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Vid.Alexand.ab Alexand. Gen. dierú l.1.c.7.

ficiently by the Records which we have of the Decrees of Egypt, of Athens, of Rome; and not onely by the restraint of the Twelve Tables, and of Claudius and Vespasian; but by the absolute forbiddance of many popular statutes condemning this usage: Tiberius himselfe though otherwise wicked enough, yet would rather furnish the Bankes with his own stock, to be freely let out for three yeares to the citizens, upon onely fecurity of the fumme doubled in the forfaiture, then he would endure this griping and oppressive transaction: And how wife Cato drove out all usurers out of Sicilie, and Lucullus freed

Cafe I+

all Asia from this pressure of Interest, history hath sufficienly recorded.

As for Lawes Ecclesiasticall, let it be enough that a Councell hath defined, that to say usury is not a fin, is no better then herefie: and in succeeding times how liable the usurer hath ever been to the highest censures of the Church; and how excluded from the favour of Christian buriall, is more manifest then to need any

Secondly, how ever it is unlawfull to covenant for a certaine profit for the mere loane of money, yet there may be, and are circumstances appending to the loane, which may admit of some

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Dec.I.

benefit to be lawfully made by the lender for the use of his money; and especially these two; the losse that he sustaines, and the gaine that he misses, by the want of the summe lent: For what reason can there be, that to pleasure another man, I should hurt my selfe, that I should enrich another by my owne losse?

If then I shall incurre a reall losse or forfaiture by the delayed payment of the summe lent, I may justly look for a satisfaction from the borrower; yea if there be a true danger of losse to me imminent, when the transaction is made, nothing hinders but that I may by compact make sure such a sum

as may be fufficient for in indemnity; And if I fee an opportunity of an apparent profit that I could make fairly by the disburfing of fuch a fumme bond flae, and another that hath a more gainfull bargaine in chace shall fue to me to borrow my money our of my hand for his owne greater advantage, there can be no reason why in such a case I should have more respect to his profit, then my owne; and why should I not even upon pact, fecure unto my felfe such a moderare summe as may be fomewhat answerable to the gaine which I doe willingly forgo, for his greater profit? Since it is a true ground which

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Dec.I.

Lessius (with other Casuists) maintaines against Sosus and Durand, that even our hopes of an evident commodity are valuable; and hat no lesse, then the fears of our losse.

Shortly, for the guidance of our either caution, or liberty in matter of borrowing, and lending, the onely Cynosure is our Charity; for in all humane and civi l acts of Commerce, it is a fure rule, That whatsoever is not a violation of Charity cannot be unlawfull, and whatfoever is not agreeable to Charity can be no other then finfull: And as Charity must be your rule, so your selfe must be the rule of your Charity; Look

Cafe 1.

Look what you could wish to be done to you by others, doe but the same to others, you cannot be guilty of the breach of Charity: The maximes of Trafique are almost infinite; onely Charity (but ever inseparable from Justice) must make the application of them; That will teach you that every increase by loan of money is not usurarie; and that those which are absolutely fuch, are damnable: that wil teach you to diftinguish betwixt the one improvement of loane, and the other; and will tell you that if you can find out a way whether by loan, or fale, to advance your stock, that may befree fro m all oppression, and extortion, and

Dec.I.

and beneficiallas well to others, as to your felfe, you need not feare to walke in it with all honest security: but in the meane time take good heed that your heart beguile you not in mis-applications; for we are naturally too apt out of our felf-love to flatter our felves with faire glozes of bad intentions; and rather to draw the rule to us, then our selves to the rule.

But whiles I give you this short folution, I must professe to lament the common ignorance, or mistaking of too many Christians, whose zeal justly cries down usury as a most hatefull and abominable practise, but in the meane time makes no bones of actions no lesse biting,

Cafe.1.

ting, and oppressive: they care not how high they fell any of their commodities, at how unreasonable rates they set their grounds, how they circumvent the buyer in their bargaines, and think any price just, any gaine lawfull that they can make in their markets: not confidering that there is neither lesse, nor lesse odious usury in felling and letting, then there is in lending: It is the extortion in both that makes the finne; without which the kind or terms of the transaction could not be guilty. Surely it must needs be a great weaknes to think that the same God who requires mercy and favour in lending, will allow us to be cruell Dec. I.

cruell in selling, Rigour and excesse in both equally violates the law of commutative Justice, equally crosses the law of charity: Let those therefore that make scruple of an usurious lending, learn to make no lesse conscience of a racking bargain; otherwise their partiall obedience wil argue a groffe hypocrifie; & they shal prove themselves the worst kind of what they hate, usurers: For in the ordinary loan-usury, the borrower hath yet time to boot for his money; but here the buyer payes downe an excessive interest, without any confideration at all, but the sellers crueltie. For the fuller clearing of which point; whereas you ask CASE

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Cafe 2.

CASE II.

Whether may I not sell my wares as deare as I can, and get what I may of every buyer? I answer,

There is a due price to be fet upon every saleable commodity; else there were no commerce to be used among men: For if every man might set what rate he pleases upon his lands or goods, where should he find a buyer? surely nothing could follow but consusion, and want; for mere extremity must both make the markerand regulate it.

The due price is that which cuts equally and indifferently betwixt the buyer

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Dec. 1.

and feller; so as the seller may receive a moderate gain, and the buyer a just pennyworth.

In those countries wherein there is a price set by publique authority upon all marketable commodities, the way of commerce is well expedited, and it is soone and easily determined, that it is meet men should be held close to the rule.

But where all things are left to an arbitrary transaction, there were no living if some limits were not set to the sellers demands.

These limits must be the ordinary received proportion of price current in the severall countries wherein they are sold; and the judgement

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Case 2.

of discreet, wise, experienced and unconcerned persons; and the well-stated conscience of the seller.

If men shall wilfully run beyond these bounds, taking advantage of the rarenesse of the commodity, the paucity or the necessity of the buyers to enhance the price to an unreasonable height, they shall be guilty of the breach of charity, and in making a sinfull bargaine purchase a

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Not that a man is so strictly tyed to any others valuation, as that he may not upon any occasion aske or receive more then the common price; or that if the market rise he is bound to sit still: There may be just reason upDec. I.

on a generall mortality of cattle to fet those beafts that remaine at an higher rate, or upon a dearth of graine, or other commodities, to heigh ten the price; but in such cases we must be so affected as that we grudge to our selves our owne gaine, that we be not in the first file of enhancers, that we strive to be the lowest in our valuation, and labour what we may to bring downe the market; alwayes putting our felves in our conceits into the buyers roome; and bethinking how we would wish to be dealt with, if we were in his cloathes.

It is lawfull for the seller in his price to have regard not to his rents and disburse-

ments

ments onely, but to his la- Case 2. bour, and cost, to his delay of benefit, to his loffe in managing, to his hazzard or difficulty in conveyance; but all these in such moderation, as that he may be a just gainer by the bargaine: not letting the dice upon the buyer; not making too much hast to be rich, by the secret spoyles of an oppressed neighbour.

Those things whose end is only pleasure or ornament, as a Jewell, an hauke, or an hound, can admit of no certaine value; the owners affection must estimate it, and the buyers defire must make up an illimited bargaine; but even in these, and all other commodities that carry the face of unnecessary, consci-

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Dec. I.

ence must be the Clarke of the market; and tell us that we must so sell, as we could be willing to buy. From all which it followes,

Dom. Sot, de Justit. & Iure l.6. quæst.2. Artic.3. tradit hoc ut Axioma Iurisconfultorum.

That the common maxime current in the shops of trade, that things are so much worth as they can be sold for, and those ordinary rules of chapmen, that men who are masters of their wares may heighten their prices at pleasure, and get what they can out of all commers; that what ever they can get out of the simplicity, or necessity of the buyers, is lawfull prize; are danimably unchapitable, and unjust.

It were an happy thing; if as it is in some other well or dered nations, there were a certaine

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certaine regulation of the Case 2, prices of all commodities by publique authority, the wifedome whereof knowes how to rife and fall according to the necessity of the occasion, fo, as the buyer might be fecured from injury, and the feller restrained from a lawlesse oppression. But where that cannot be had, it is fit that Justice and charity should so farre over-rule mens actions, that every man may not be carried in matter of contract by the sway of his owne unreasonable will, and be free to carve for himselfe as he lists of the buyers purse : every man hath a bird in his bosome that fings to him another note.

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Dec. 1.

A good conscience therefore will tell you that if (taking advantage of the ignorance or unskilfulnesse of the buyer) you have made a prey of him by drawing from him the worth of the double commodity fold, you are bound to make restitution to him accordingly; and in a proportion fo, in all the confiderable fummes which you shall have by your false protestations, and oathes, and plaufible intimatios wrought out from an abused buyer; above that due price which would make you a just and rightly moderated gainer: For affure your selfe, all that you willingly doe this way is but a better-coloured picking of purfes; and whatyou

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thus get is but stolne goods varnisht over with the pretence of a calling, and will prove at the last no other then gravell in your throat.

CASE III.

Whether is the seller bound to make knowne to the buyer the faults of that which he is about to sell?

IT is a question that was long since disputed betwixt the heathen Sages, Antipater and Diogenes, as Cicero in formes us: with whom Cato so decides it as that his judgment may justly shame and condemne the practise of too many Christians: For a full answer, due consideration C must

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Dec.I.

must be had of divers circumftances.

First, what the nature and quality of the fault is; whether it be fleight and unimporting; or whether fuch as may vitiate the thing fold, and render it either unusefull or dangerous to the buyer : or againe, whether the fault be apparent; or secret: both these doe justly vary the case:sleight & harmles faults may be concealed without injuffice; maine and importing must be fignified : if apparent defects be not discerned by the buyer, he may wi thanke himselfe, secret faults on knowne onely to the feller, ber (fuch as may be prejudicial) co to the buyer) ought not to ad be concealed: or if they be fell con-

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concealed so, as that the buyer payes for it as found, and perfect, binde the seller in conscience, either to void the bargaine, or to give just fatisfaction.

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Secondly, it would be confidered, whether the buyer before the bargaine be stricken, hath required of the seller to fignifie the faults of the commodity to be fold, and out of a reliance upon the fellers fidelity and warrant; hath made up the match : or whether in the confidence of his owne skill, ay without moving any question, he enter resolutely, (de bene esse) upon the bargained iall commodity: If the former, to a double bond lyes upon the be feller to deale faithfully with the

Dec.I.

the buyer, and therefore to let him know the true condition of the thing exposed to fale, that so either he may take off his hand; or if he shall see that notwithstanding that defect it may ferve his turn, he may proportion the price accordingly: otherwife he shall be guilty (befides falshood and oppression) of perfidiousnesse. But if the buyer will peremptorily relye upon his owne judgement, and as prefuming to make a gain of that bargain (which the feller out of conscience of the imperfection, fets (as he ought) so much lower as the defect may be more disadvantageous to the buyer) will goe through with the contract, and stand

Cafe 30

fon why the feller may not receive the price stipulated; but withall if the match may carry danger in it to the

carry danger in it to the buyer, (as if the horse sold be subject to a perilous starting, or stumbling; or the house sold have a secret crack that may threaten ruine; or the land sold be liable to a litigious claime which may be timely avoyded) the seller is bound in conscience (at

least after the bargaine) to

intimate unto the buyer

these faulty qualities, that

he may accordingly provide

for the prevention of the

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But if the seller shall use art to cover the defects of his commodity, that so he

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may deceive the buyer in his judgement of the thing bargained for, or shall mix faulty wares with found, that they may passe undiscovered, he is more faulty then his wares, and makes an ill bargain for his foule. In this, shortly, and in all other cases that concerne trade, these universall rules must take place. That it it is not lawfull for a Christian chapman to thrive by fraud. That he may sell upon no other termes then he could wish to buy. That his profit must be regulated by his conscience, not his conscience by his profit. That he is bound either to prevent the buyers wrong; or if heedlesly done, to satisfy

tisfy it. That he ought Case 4. rather to affect to be honest, then rich: And lastly, that as he is a member of a community both civil and Christian, he ought to be tender of another mans indemnity no lesse then of his owne.

A . R IV. Whether may I fell my commodities the dearer for giving dayes of payment?

T'Here is no great difference betwixt this case, and that of loane, which is formerly answered; save that there money is let, here commodities moneyworth; here is a fale, there

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a lending; in the one a transferring of the right and command for the time; in the other perpetually: but the substance both of the matter and question is the same; for in both there seems to be a valuation of time: which whether in case of mutuation, or sale, may justly be suspected for unlawfull.

For answer,

There are three stages of prices acknowledged by all Casuists; the highest, which they are wont to call Rigorous; the meane, and the lowest; If these keep within due bounds, though the highest be hard, yet it is not unjust, and if the lowest be favorable, yet it is not alwayes necessary.

If then you shall propor- Case 4. tion but a just price to the time, and worth of your bargain, so as the present shall passe for the easiest price, some short time for the meane, and the longer delay for the highest, I see not wherein, all things considered, you doe offend.

And certainly to debarre the contract of a moderate gaine for the delay of payment upon moneths prefixed, were to destroy all trade of merchandise: For not many buyers are furnished with ready money to buy their wares, at the Port; nor could the fellers make off: their commodities so seasonably, as to be ready for further trafique, if they must neces-

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Dec. 1.

necessarily be tyed to wait upon the hopes of a pecuniary sale; and not left to the common liberty of putting them over to whole-sale men upon trust; who upon a second trust distribute them to those, that vent them by retaile, both for days agreed upon: By which meanes the trade holds up, and the common-wealth enjoyes the benefit of a convenient and necessary commerce.

A practife that is now for habituated amongst all nations into the course of trade, that it cannot well consist without it: So as nothing is more ordinary in experience then that those who are able to pay downe ready money for their wares, know to ex-

pect

Case 4.

pect a better pennyworth, then those that runne upon trust: And there may be just reason for this difference; For the present money received enables the seller to a further improvement of his stock, which lyes for the time dead in the hands that take day for their payment.

So then, it is not mere time that is here set to sale, which were odious in any Christian to bargain for; but there are two incidents into this practise which may render it not unwarrantable. The one is the hazard of the summe agreed upon: which too often comes short in the payment: whiles those subordinate chapmen into whose hands the grosse summer is

Dec. 1.

scattered, turne bankrupts, and forfait their trust; so as no small losse is this way commonly sustained by the confident seller; in which regard we are wont to fay justly, that One bird in the hand is worth two in the wood. The other is the cessation of that gain which the merchant might in the mean time have made of the fum differred; which might in likelihood have been greater then the proportion of the raised price can amount unto; to which may be added the foreseene probability of the raising of the market in the intervall of payment: the profit whereof is precluded by this meanes to the seller; whose full ingagement takes him

Case 4.

him off perhaps from a refolution to have referved those commodities in his owne hands in expectation of an opportunity of a more profitable utterance, had not the forwardnesse of the buyer importuned a prevention.

Upon these considerations, if they be serious, and unfained. I see not why you may not in a due and moderate proportion, difference your prices according to the delayes of payment, without any oppression to the buyer: Howbeit, if any man pleaseth to be so free, as to take no notice of time, but to make future days in his account, present, I shall commend his charity, though I dare not presse

Dec,I.

presse his example as necessary.

The case is equally just on the behalf of the feller: who if he be either driven by some emergent necessity; or drawn by the opportunity of a more gainfull bargaine, to call for his money before his day, may justly be required by the late buyer, to abate of the returnable summe, in regard of the prevention of the time covenanted; by reason of the inconvenience or losse whereunto he is put upon the suddaine revocation of that money, which is not by agreement payable til the expiration of the time prefixed. But what quantity is to be allowed on the one part, or defalked on the other.

ther, is onely to be modera- | Case 5. ted by Christian Charity, and that universall rule of doing what we would be willing to suffer.

CASE V. Whether, and how farre, Monopolies are, or may be lawfull.

He most famous Monopolie that we find in history is that of Egypt, wherein the provident Patriarch Foseph, out of the fore-fight of a following dearth, bought up the seven yeares graine for Pharaeh. and layd it up in publique store-houses; and in the generall scarcity fold it out to the

Gen. 41. 56,57. Dec.I.

So the Vulgar renders Zapnatbpaaneab Salvator mundi, Gen.41.

45.

the inhabitants, and strangers, with no small advantage; which was fo farre from unlawfull, as that he thereby merited the name of the Saviour of Egypt: and if any worthy Patriot out of a like providence, shall before-hand gather up the commodities of his country into a publique Magazine for the common benefit and reliefe of the people, upon the pinch of an ensuing necessity, he is so farre out of the reach of cenfure, as that he well deserves a statue with the Inscription of Publique Benefactor; So as it is not the mere act of Monopolizing that makes the thing unlawfull, but the ground and intention, and the

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the manner of carriage.

All Monopolies, as they are usually practised, are either fuch as are allowed by Soveraigne authority, or privately contrived by secret plot and convention for a peculiar gaine to some speciall persons. If the first, it must be considered upon what reason that priviledge is granted, and upon what termes; If both these be just, the grant can be no other. For first, it may not be denyed, that supreme authority, whether of Princes or States, hath power to grant fuch priviledges where they shall find just cause; and secondly, that there may be very just motives of granting them to some capable and

Cafe 5:

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and worthy persons; I should be ashamed to i-magine that either of these should need any probation.

Doubtlesse then, there is manifest equity that where there hath beene some great merit, or charge, or danger in the compassing of some notable work for a common good, the undertaker should be rewarded with a patent of a secured profit to himselfe. As put case some wel-minded Printer (as one of the Stephens) is willing to be at an excessive charge in the faire publication of a learned and usefull work for the benefit of the present and following ages; it is most just that he should from the hands of Princes or

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or States receive a Priviledg for the sole impression; that he may recover, with advantage, the deep expence he hath beene at; Otherwise some Interloper may perhaps underhand fall upon the work at a lower rate, and undoe the first editor; whose industry, care and cost shall thus be recompenced with the ruine of himself and his posterity; as were too easie to instance.

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If a man have by notable dexterity of wit, and art; and much labour and charge after many experiments, attained to the skill of making some rare engine of excellent use for the service of his Prince and Countrey, as some singular water worke;

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Dec. 1.

or some beneficiall instrument for the freeing of navigable rivers from their sandy obstructions, it is all the reason in the world, that by the just bounty of Princes he should be so farre remunerated as that he alone may receive a patent of enjoying a due profit of his own invention.

But how farre it may be lawfull for a Prince not only to gratifie a well-deferving Subject, with the fee of his owne devise, but with a profit arising from the sole sale of marketable commodities through his Kingdome: or whether, and how farre in the want of moneys for the necessary service of his State, he may

Cafe 5.

for the publique use, raise, fet, or fell monopolies of that kind, is diverfly agitated by Casuists; and must receive answer according to the absolutenesse or limitation of those Governments, under which they are practised: But with this, where this is done, there may be great care had of a just price to be fet upon the commodities so restrained, that they be not left to the lawleffe will of a priviledged engrosser, nor heightened to an undue rate by reason of a particular indulgence.

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This may be enough for authoritative Monopolies. The common fort of offensive practises this way are private and single, or

conven-

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coventionall, and plotted by combination; The former, as when some covetous extortioner out of the strength of his purse buyes up the whole lading of the ship, that he may have the fole power of the wares to fell them at pleasure; which, there is no feare but he will doe with rigour enough: The true judgment of which action, and the degrees of the malignity of it, must be fetcht, as from the mind, so from the management of the buyer; as being so much more finfull, as it partakes more of oppression. latter, when some brethren in evill conspire to prevent the harvest, to buy up, or hoord up the graine; with a purpose

Caje 5.

purpose to starve the market, & to hatch up a dearth: A damnable practise in both kindes; and that which hath of old beene branded with a curse; ne ther lesse full of injustice then uncharitablenesse; and that which cryesaloud, for a justpunishment, and satisfactory resti tution.

I cannot therefore but marvaile at the opinion of learned Lessim (which he fathers also upon Molina) that too favourably minces the hainousnesse of this sin; bearing us in hand that it is indeed an offence against charity, and common profit, but not against particular Justice. His reason: To buy that corn (saith he) could not be

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Dec.I.

be against justice, for he bought it at the current price: Nor yet to sell it, could be against justice, because he was not tyed out of justice at that time to bring it forth to sale: When he might easily have considered, that it is not the mere act of buying, or of not felling, that in it selfe is accused for unjust, but to buy, or not to fell, with an intention, and issue of oppressing others, and undue enriching themselves by a dearth. For what can be more unjust then for a man to indevor to raise himself by the affamishing of others?

Neither can it serve his turne to say, by way of excuse, that the multitude

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of buyers may be the cause | Case 5. of a dearth, and yet without sin; since they doe rather occasion, then cause a scarcity; and are so farre from intending a dearth in making their market, that they deprecate it, as their great affliction.

And if, by his owne confession, those who either by force, or fraud hinder the importation of corne, that a dearth may continue, are guilty of injustice, and are bound to make restitution both to the Commonwealth in giving cause to raise the price; as also to the Merchant, whom they have hindered of his meet gain; how can those be liable to a lesse fin, or punishment, that either buy

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buy up, or wilfully keep in, their graine with a purpose to begin, and hold on a dearth? and what lesse can it be then force or fraud, that by their crafty and cruell prevention the poore are necessitated to want that sustenance, whereby their life should be maintained?

Pro 11.26.

Wise Solomon shall shut up this Scene for me. He that with-holds corne, the people shall curse him, but blessings shall be upon the bead of him that selleth it.

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CASE VI.
Whether, and how farre doth
a fraudulent bargaine bind
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HOw far in matter of law, you must advise with other Counsaile: but for matter of conscience, take this:

Is the fraud actively yours, done by you to another? or else passively put by another upon you? If the former, you are bound to repent and satisfie; either by rescinding the match, or by making amends for the injury: If the latter; wherein did the fraud lye? If in the maine substance of the thing sold, the bargaine is both by the very law of D 2 nature.

Dec.I.

Lessius 1.2. c.17. dub. nature, and in conscience, void; yea indeed, none at all: as if a man have fold you copper lace for gold; or alchymie-plate for filver; the reason is well given by Casuists: There is no bargaine without a consent; and here is no consent at all, whiles both parties pitch not upon the same subject; the buyer propounds to himselfe gold and silver, the feller obtrudes copper, and Alchymie; the one therefore not buying what the other pretended to fell, here is no bargaine made, but a mere act of cozenage, justly liable to punishment by all lawes of God and man. But if the fraud were onely in some circumstances;

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as in some faulty condition of the thing fold not before discerned; or in the overprizing of the commoditie bought; the old rule is, Caveat emptor; You must (for ought I know) hold you to your bargaine; but if that faulty condition be of so high a nature that it marres the commoditie, and makes it uselesse to the buyer, the seller (being conscious of the fault) is injurious in the transaction, and is bound in conscience to make satisfaction; and if he have willingly over-reacht you in the price, in a confiderable proportion is guilty of oppression.

It is very memorable in es; this kinde that Cicero relates

Dec.1. Cicer.de Offic.l.3. § 58.

to us of a fraudulent bargain betwixt Canius, a Roman Knight and Orator, and one Pythius a Banker of Syracuse. Canius comming upon occasion of pleading to the city of Syracufe, took a great liking to the place; and fetling there, gave out that he had a great desire to buy some one of those pleasant gardens, wherewith, it seems, that city abounded; that he might there recreate himself when he pleased, with his friends.

Pythius a crafty merchant hearing of it, sends word to Canius, that he had a fair garden which he had no mind to sell; but if he pleased to make use of it for his solace, he might command it as his owne;

Cafe 6.

owne; and withall courteoully invites Canius to f p with him there the day following: In the meane time being a man by reason of his trade of exchange, very gracious in the city, he calls the fishermen together, and defires them that the next evening they would fish in the stream before his garden, and bring him, what they shall have caught; Canius in due time comes according to the invitation, to supper; where there was delicate provision made for him by Pythus; and store of boats bringing in their plentifull draughts of fish, and casting them downe at the feet of Pythius: Canius askes the meaning of this concourse

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of Fishermen, and store of profered provision: Pythius tells him this is the commodity and priviledge of the place, if Syracuse yeeld any fish, here it is caught, and here tendered; Canius beleeving the report, importunes his host to sell him the ground; the owner after some seeming loathnesse, and squeamish reluctation, at last yeelds to gratifie him with the bargain: The dear price is payd down with much eagernesse. The new master of the place, in much pride of his purchase, the next day repaires early to his garden, invites his friends to a friday feast; and finding no boat there, asks the neighbour whether it were holiday with the fisher-

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fishermen, that he saw none Case 6. of them there; No, faid the good man, none that I know; but none of the trade use to fish here; and I much marvailed at the strange confluence of their boates here yesterday: The Roman Orator was downe in the mouth; finding himselfe thus cheated by the monychanger: but, for ought I fee, had his amends in his hands; He meant, and defired to buy the place though without any fuch accommodation; but over-bought it, upon the false pretence of an appendent commodity; the injury was the fellers, the losse must be the buyers.

But if such be the case,

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that you are meerly drawne in by the fraud, and would not have bought the commodity at all, if you had not been induced by the deceit, and false oathes and warrants of the feller, you have just reason, either, if you may, to fall off from the bargaine; or, if the matter be valuable, to require a just fatisfaction from the feller, who is bound in conscience either by annulling the bargaine, or abatement of price to make good your indemnity.

In these matters of contract there is great reason to distinguish betwixt a willing deceit, and an involuntary wrong; If a man shall fraudulently sell an horse which

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Cale 6.

he knowes fecretly and incurably diseased, to another for found, and that other, beleeving the fellers deepe protestation, shall upon the same price, bona fide, put him off to me; I feele my selfe injuried, but whither shall I go for an amends ? I cannnot challenge the immediate seller, for he deceived me not; I cannot challenge the deceiver, for he dealt not with me; In humane lawes, I am left remedilesse; but in the law of conscience, the first seller, who ought to have born his owne burden of an inevitable loffe, is bound to transferre by the hands that fold me that injurious bargaine, a due fatisfaction.

Neither

Dec. 1.

Neither is it other in the fraudulent conveyances of houses or land, how ever the matter may be intricated by passing through many perhaps unknowing hands, yet the fin and obligation to satisfaction, will necessarily lie at the first doore; whence if just restitution doe not follow, the seller may purchase hell to boot.

Thinke not now on this discourse that the only fraud is in selling; there may be no lesse (though not so frequent) fraud in buying also; whether in unjust payment, by false coyne; or by injustice of quantities, as in buying by weights, or measures above allowance; or by wrong valuation of the sub-

Case 6.

substance and quality of the commodity, misknowne by the feller; As for instance, A fimple man, as I have knowne it done in the Westerne parts, finds a parcell of Ambergris cast upon the fands; hee perceiving it to be some unctuous matter, puts it to the base use of his shooes, or his cart wheele; a merchant that smels the worth of the stuffe buyes it of him for a small fumme; giving him a shilling or two, for that which himselfe knowes to be worth twenty pounds: the bargain is fraudulent; and requires a proportionable compenfation to the ignorant seller, into whose hands providence hath cast so rich a booty.

Shortly,

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Shortly, in all these intercourses of trade, that old and just rule which had wont to sway the trassique of heathens, must much more take place amongst Christians, (cum bonis benè agier) that honest men must be honestly dealt with: and therefore that all fraud must be banished out of their markets; or, if it dares to intrude, soundly punished; and muscled with a due satisfaction.

CAS B

Case 7.

CASE VII.

How farre, and when am I bound to make restitution of another mans goods remaining in my hands?

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R Estitution is a duty no lesse necessary, then rarely practifed amongst Christians. The Arch-publican Zacheus knew that with this he must begin his conversion; and that known rule of Saint Austen is in every mans mouth, No remission without restitution. For this act is no small peece of commutative Inflice; which requires that every man should have his owne: Most just therefore it is, that what you have taken, or detained from the

Aug. epist. 54.ad Macedon. Dec.I.

the true owner should be restored; neither can it be sufficient, that you have conceived a drye and bootlesse forrow for your wrongfull detention, unlesse you also make amends to him by a reall compensation.

But you are disabled to make restitution by reason of want, your will is good, but the necessity into which you are fallen, makes you uncapable of performance: See first, that it be a true, and not fained necessity; Many a one, like to leud criples that pretend false soares, counterfait a need that is not, and shelter themselves in a willing Jaile, there living merrily upon their defrauded creditor, whom they might honeste-

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Case 7.

honeftly fatisfie by a wellimproved libertie: This case is damnably unjust; but if it be a true necessity of Gods making, it must excuse you for the time; till the same hand that did cast you down, shall be pleased to raise you up againe; then, you are bound to fatisfie; and in the meane time, lay the case truly before your creditor, who, if he be not mercilesse, where he fees a reall defire,& indevour of satisfaction, will imitate his God in accepting the will for the deed: and wait patiently for the recovery of your estate.

You ask now, to whom you should tender restitutios:

To whom, but the owner? But he, you fay, is dead,

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That will not excuse you; he lives still in his heires; It is memorable (though in a small matter) which Seneca reports of a Pythagorean Philosopher at Athens, who having run upon the score for his shoos at a shop there; hearing that the shoomaker was dead, at first was glad to think the debt was now paid; but straight recollecting himselfe, he says within himselfe; Yet, howsoever, the shoomaker lives still to thee, though dead to others; and thereupon puts his money into the shop, as supposing that both of them would find an owner. It is a rare case that a man dies, and leaves no body in whom his right furvives: But if there be neither heire,

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sharer, where the need is equall; yet it is fit this should be done with the knowledge, and approbation of others: Your Pattor, and those other that are by authority interessed in these publique cares, are fit to be acquainted with the case; (if it be in a matter meet to be notified) as a businesse of debt or pecuniary ingagemet let their wisdome proportion the distribution; But if it be in the case of some secret crime, as of theft, or cozenage, which you would keep as close as your owne heart, the restitution must be charged upon your conscience to be made with so much, more impartiality, as you defire it more to be concealed; Herein

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Herein have a care of your foule, what ever becomes of your estate.

As for the time of restitution it is easily determined, that it cannot well be too soone for the discharge of your conscience, it may be too late for the occasions of him to whom it is due; Although it may fall out that it may prove more fit to deferre for the good of both: wherein charity and justice must be called in as arbitrators; The owner calls for his mony in a riotous humour to mif-spend it upon his unlawfull pleafure; if your delay may prevent the mischiefe, the forbearance is an act of mercy: The owner cals for the fword

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Dec.I.

deposited with you, which you have cause to suspect he meanes to make use of, for some il purpose; your forbearing to restore it is so both charitable and just, that your act of delivery of it may make you accessary to a murther. Whereto I may adde, that in the choice of the time, you may lawfully have some respect to your felfe; for if the present restitution should be to your utter undoing, which may be avoided by some reasonable delay, you have no reafon to shun anothers inconvenience by your owne inevitable ruine; in fuch case let the creditor be acquainted with the necessity, his offence deprecated; and rather put

Case 7.

put your selfe upon the mercy of a Chancery, then be guilty of your owne overthrow.

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But when the power is in your hand, and the coast every way cleare, let not another mans goods or money stick to your fingers; and think not that your head can long lye easily upon another mans pillow.

Yea, but you fay the money or goods mif-carried, either by robbery or false trust, ere you could employ them to any profit at all; This will not excuse you; after they came into your power, you are responsible for them; What compassion this may work in the good nature of the owner for the savour of

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Cafe 8.

Whether, and how farre doth

a promise extorted by fear, though seconded by an oath, bind my conscience to performance:

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A mere promise is an honest mans strong obligation; but if it be withall backed with an oath, the bond is sacred, & inviolable.

But let me ask you what promise it is that you thus made, and bound; If it be of a thing unlawfull to be done, your promise and oath is so farre from binding you to performance, that it binds you onely to repentance that ever you made it; In this case your performance would double and heighten your

Dec.I.

fin: It was ill to promise, but it would be worse to performe: Hered is by oath ingaged for an indefinite favour to Salome; She pitches upon John Baptist's head; He was fory for such a choice, yet for his oaths fake he thinkes he must make it good: Surely, Hered was ill-principled, that he could think a rash oath must bind him to murder an innocent; He might have truly faid, this was more then he could doe; for that we can doe, which we can lawfully doe.

But if it be a lawfull thing that you have thus promifed, and sworne; though the promise were unlawfully drawn from you by fear, I dare not perswade you to violate it.

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It is true that divers learned Cafuists hold, that a promise drawne from a man by feare is void, or at least revocable at pleasure; and so also the oath annexed, which followes the nature of the act whereto it appends: chiefly upon this ground; that both these are done without confent, mere involuntary acts, fince nothing can be fo contrary to consent as force and feare: Bur I dare not goe along with them; for that I apprehend there is not an absolute involuntarinesse in this ingagement, but a mixt one; fuch as the Philosopher determines in the Mariner, thar casts his goods over board to fave his life; in it selfe, he hath

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no will to doe it; but here and now upon this danger imminent, he hath an halfewill to performe it.

Secondly, I build upon their owne ground, There is the same reason, they say, of force, and of fraud; now that a promise and oath drawne from us by fraud bindes strongly, we need no other instance then that of Foshua made to the Gibeonites; there could not be a greater fraud then lay hid in the old shooes, thredbare garments, rent bottles, and mouldy provisions of those borderers; who under the pretence of a remote nation put themselves under the interest and protection of Ifrael: the guile soone proved

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Iofh.9.12, 13,&c.

proved apparent, yet durst Case 8. not Folbua, though he found himselfe cheated into this covenant, fall off from the league made with them; weh when, after many ages, Saul out of politique ends went about to have broken, we fee how fearfully it was avenged with a grievous plague of famine upon Ifrael, even in Davids dayes, who was no way accessary to the oppression; neither could be otherwise expiated then by the bleeding of Saul's bloody house. When once we have interessed God in the businesse, it is dangerous not to be punctuall in the performance. If

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Leffius de Iure,&c. &e.l.z. C. 4z.dub.6.

have fer his dagger to your brest, and with big oathes threatned to stab you unlesse you promife and sweare to give him an hundred pounds to be left on such a day, in fuch a place for him, I fee not how (if you be able) you can dispense with the performance; the onely help is; (which is well fuggefted by Lessius) that nothing hinders why you may not, when you have done, call for it backe againe, as unjustly extorted. And truly, we are beholden to the Jesuite for fo much of a reall equivocation; why should you not thus right your selfe, since you have onely tyed your selfe to a mere payment of the fum ? upon staking it downe for him,

him, you are free. But if Case 8, he have forc'd you to promife, and fwear not to make him knowne, you are bound to be filent in this act, concerning your selfe; but withall, if you find that your filence may be prejudiciall to the publique good, for that you perceive the licentiousnesse of the offender proceeds (and is like so to doe) to the like mischiefe unto others, you ought, though not to accuse him for the fact done unto you, yet to give warning to some in authority to have a vigilant eye upon so leud a person, for the prevention of any further villany.

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But if it be in a businesse, whose perill rests onely in

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your selfe, the matter being lawfull to be done; your promise and oath (though forced from you) must hold you close to performance, notwithstanding the inconveniences that attend. If therefore you are dismisfed upon your Parole, for a certaine time, to returne home, and dispose of your affaires, and then to yeeld your selfe againe prisoner to an enemy; the obligation is so strict and firme, that no private respects may take it off: and it should be a just fhame to you that a * Pagan should out of common honesty hold himselfe bound to his word, (not without the danger of torment and death) when you that are

* Attilius Regulus. tl

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a Christian slip away from Case 9, your oath.

CASE IX.

Whether those moneys or goods which I have found, may be safely taken and kept by me to my owne u (e..

IT is well distinguished by Sotus out of Aquinas, that those things which may be tound, are either such as call no man master, as some pearle, or precious stone, or Ambergris lying upon the shore; or such as have an owner, but unknowne to us, or (as we may adde, to make up the number complete) fuch as whose owner we know. Where the true E owner

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Dom. Sor. de Iure et Juftit.l.s. q : pag. 436.

Dec. 1.

owner is knowne, speedy restitution must follow; otherwise, the detention is in the next doore to theft; Where the commodity found hath no owner, it justly falls to the right of the first finder; for both the place and the thing are masterlesse, (adespota) and common , offering themselves to the next commer: The onely difficulty is in those things which have an unknowen owner: And certainly common justice and honesty suggests to us, that we may not feize on commodities of this kinde, as absolutely our owne; the casualty of their mis-laying doth not alter their propriety; they are still his that

Cale 9.

that lost them; though out of his fight, yet not out of his right; and even naourall Justice, would give every man his owne. The Lawes both Civill, and Canon, and Municipall doe fufficiently guide our pradife in many particular cases of this nature, and our Conscience must lead us to follow them: If they be quick commodities, as horses, theep, kine, and the like, (which we call Waives and Strayes) every one knowes they are to be publiquely impounded, that upon search the owner may be the furer to find them; and if become not in, the fooner, to be openly cryed in feverall markets, that the noise of his owne

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owne neglected goods may come to his care: and if, upon a continuing filence, they be put into the Custody of the Lord of the Manor, (who is most likely to be responsible) and he shall make use of them, before his year and day be expired, he shall not doe it without some marke of distinction, that vet the true owner may know, they are not challenged by the present possessor, as his owne, but lye open to the just claime of their true master.

But if they be dead commodities, as a jewell, a purse, or some ring of price, or the like, the finder may not presently smother up the propriety of it in his own cofer;

his

his heart tells him that the mere accident of his finding it, cannot alienate the just right of it from the true owner; he is therefore bound in conscience, in an honest sin cerity to use all good means for the finding out of the right proprietary, whether by secret inquiry, or open publication: and if after due inquisition, no claime shall be made to it for the present, he shall reserve it in his hand in expectation of a just challenge: upon the affurance whereof (how late foever) he is bound to restore it to the proper owner: who, on the other fide, shall faile in his duty of gratitude, if he returne not fome meet acknowledgment of

Dec. I.

of that good office, and fidelity: In all which mutuall carriages, we ought to be guided by those respects which we could wish tendered to our selves in the like occasions. Mean while, in all the time of our custody, we are to looke upon those commodities as strangers; making account of fuch a potentiall right onely in them, as we are ready and defirous to refigne to the hands that purchased and lost them. On the contrary, no words can expresse the horrible cruelty and injustice that is wont to be done in this kinde, not onely on our shores, but in other nations also, upon the hip-wracked goods both of Aran-

Cafe 9.

strangers, and our owne compatriots; whiles in stead of compassioning and relieving the loffe, and miferies of our distressed brethren, every man is ready to run upon the spoile, and, as if it were from some plundered enemy, is eagerly busie in carrying away what riches foever co meto hand, which they falfly, and injuriously term Gods grace, when as indeed it is no other then the Devils booty. This practife can passe for no other then a mere robbery, fo much more haynous, as the condition of the mif carried owner is more miserable: What a foule inhumanity is this, to persecute him whom God hath smitten? and upon no other Dec.I.

other quarrell to be cruell to our brother, then because the Sea hath been mercileffer. Deare countrymen, ye especially of the West, leave these abominable pillages to favage Nations, that know not God; and, putting on the bowells of tender compassion, lend your best succour rather for the rescue of poore wracked foules, and fafely preserving that small residue of their drowned fraight, which you cannot imagine that the Sea hath therefore forborne to swallow, that you might.

CASE

Cafe 10.

CASE X.

Whether I may lawfully buy
those goods which I shall
strongly suspect, or know to
be stollen or plundered;
or, if I have ignorantly
bought such goods, whether I may lawfully (after
knowledge of their owner)
keepe them as mine.

To buy those goods web you know, or have just cause to suspect to be stoln or plundered, is no better then to make your selfe accessary to the thest; if you doe it with an intention to possesse them as your owne; for what doe you else herein, but expost-sacto partake with that theese,

Dec. 1.

theefe, who stole them; and incourage him in his leud practifes : fince according to the old word; If there were no receivers, there would be no theeves. Neither will it serve the turn, that in the case of plunder, there may feem a pretence of justice, in that this is pleaded perhaps to be done by some colour of authority; for certainly where there is not law, there can be no justice, whereof law is the onely rule: What ever then is against an established Law, in matter of right and possession, can be no other then unjust; Take heed therefore left that heavy challenge of the Almighty be (upon this bargaine) charged

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Caje 10.

Pfa.50.18.

ged upon you; When thou sawest a theefe, thou consentedst with him: These stoln waters may be sweet in the mouth, but they will be poyson in the mawe, and like the water of a just jealousie, rottennesse to the belly: But if (as these illgotten goods are lightly cheape pennyworths) you buy them onely with an intention to gratifie the true owner, with an easie purchase of his owne, (which would perhaps else be unrecoverable) (whiles your profession to doe it for no other end takes off the scandall) I cannot but allow your act, and commend your charity.

But if, making use of that

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rule

Dec. 1.

rule which Saint Paul gives for mear, in bargaining for any other commodities, you shall extend your liberty to whatsoever is fold in the market, and shall in the exercise of that freedome upon a just and valuable confideration ignorantly buy those goods which you afterward heare, and know, to be anothers, the contract is on your part valid, and faultlesse, since your invincible want of knowledge acquits you from any guilt of confent; but withall, there is an after-game to be plaid by you: you are bound (upon just notice) to acquaint the true owner with the matter, and to profer your selfe ready to joine with

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Case 10.

with him in the profecution of law, or justice upon the offender, and upon a meet satisfaction to tender him his owne.

But if the theft be onely upon probability; and it be doubtfull whether the goods belong to the owner notified to you, your duty is to make diligent inquiry into the businesse; and if upon due inquisition, you find too much likelihood of the theft, I dare not advise you (with fome Casuists) to reverse the bargaine, and to returne the commodity to those false hands that purloyned it; but rather to call the probable owner, and with him to appeale unto just authority, for a more full examination of the

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Dec.I.

the right, and an award anfwerable to justice: but if there appeare no good grounds for an impeachment, you may peaceably sit down in the possession, till further evidence may convince your judgement in the contrary.

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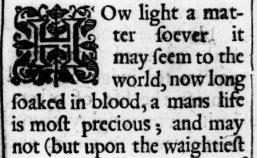
RESOLUTIONS.

The Second Decade.

Cases of Life and Liberty.

CASE I.

Whether, and in what cases it may be lawfull for a man to take away the life of another.



Dec.z.

of all causes) be either taken, or given away. The great God hath reserved to himselfe this prerogative, to be the onely absolute Lord of it; neither can any creature have power to command it, but those onely to whom he hath committed it by speciall deputation; nor they neither, by any independent or illimited authority; but according as it is regulated by just lawes: to call for a mans life merely out of will, is no other then a Turkish tyranny.

Now the same God that hath ordained Soveraigne powers to judge of, and protect the life of others, hath given weighty charge to every man to tender and manage in

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manage his owne : which Cafe I binds him to use all just meanes for his owne preservation; although it should be the necessitated destruction of another.

Let us fee therefore how far and in what cases, man, that is alwayes appointed to be master of his own life, may be also master of another mans.

That publique justice may in take away the life of hainous malefactors, is fufficiently knowne, to be not lawfull onely, but required; and indeed so necessary, that without it there were no living at all amongst men.

That in a just warre the life of an open enemy may be taken away, is no lesse

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Dec.2.

evident; the onely question is of private men in their owne cases.

And here we need not doubt to say that even a private man, being mortally affaulted, may in his owne defence lawfully kill another; I suppose the assault mortall, when both the weapon is deadly, and the fury of the affailant threatens death; as for Tome fleight and fuddain passages of a swich, or a cane, they come not under this conderation, although those finall affronts offered to eminent persons prove oftentimes to be quarrells no lesse then mortall. even in these affaults, (except the violence be so too impetuous, that it will admit

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Cafe I.

mit of neither parle nor pause) there ought to be (fo much as may consist with our necessary safety) a tender regard and indevor to avoid the spilling of blood; but if neither perfwafion, nor the shifting (what we may) our flation, can abate any thing of the rage of the affailer, death must: Yea, if not my brother onely, but my father, or my fonne should in this forcible manner fet upon mee, howfoever I should hazard the award of some blowes, and with teares beg a forbearance, yet, if there would be no remedy, nature must pardon me; no man can be so neare me as my felfe. (lis to flora si daide)

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Dec. 2. Lef.de jur. &c. l. 2 c. 9.dubit.8. Ex Antonio et Sylvest_f.&c.

I cannot therefore subscribe to the counsell of Leonardus Lessius (abetting fome ancient Casuists, and pretended to be countenanced by some Fathers) that it were meet for Clericall and Religious persons rather to suffer death then to kill a murtherer: fince no reason can be shewed, why their life should not be as deare to them as others; or why they should be exempted from the common law of nature; or why their facred hands should be more stained with the foule blood of a wicked man-layer, justly shed, then any others. I am fure Phineas thought not for nor Samuel after him; and (which is most of all) that the

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Cafe 1.

Ibid. Fa-

ragr, ult.

the honor and priviledges of the sonnes of Levi were both procured, and feoffed on them upon an injoyned blood-shed.

Onely here is the favour and mercy of that learned

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Casuist, that Clerks and Votaries are not alwayes bound

rather to dye, then kill: for, faith he, if fuch religious

person should bethink himfelf, that he is in a deadly sin, & should thereupon fear that

he should be damned, if he were killed in that wofull and desperate estate; he were

then bound by all meanes to defend himselfe, and to preferre the safety of his

owne foule, before the life of another: As if nothing

but the feare of damnation

could

Dec.2.

p fal.116.

Leff.ibid.

could warrant a man for his own safeguard; as if nothing but the danger of hell could authorize an holy person to be his own guardian; as if the best of lives were so cheape and worthlesse, that they might be given away for nothing: whereas contrarily Precious in the fight of the Lord is the death of all his Saints. But fuch a case (according to the opinion of this great Casuist) charity to our selves doth not more arme and enforce our hand, then charity to our neighbour holds ir, and binds it up : We may not kill lest the man-flayer dying in the attempt of this murther, should everlastingly perish: Surely, I cannot but

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Cafe I.

but admire this unreasonable mercy in a father of the Society; Where was this confideration when fo many thousands of innocent perfons were doomed to be blowne up in a state of impenitence; whose unrepented herefie must needs have fent them up instantly to their hell :

By this reason, a malefactor if he be obdured in his fin, and pr ofeffeth to be remorflesse, may not feel the stroke of Justice. Shortly then, if a man will needs be wicked to my destruction, the evill is his owne; let him beare his owne guilt, let me looke to my owne indemnity.

The case is yet more dif-

F 4 ficult Dec. 2.

ficult where the attempt is not upon my person, but my goods; If a man will be offering to robbe my house, or to take my purse, what may I doe in this case ? Surely, neither charity, nor justice can diffwade me from refifting; the lawes of God and man will allow me to defend my owne; and if in this refistance the theefe, or Burglayer mifcarry, his blood wil be upon his owne head: although, in the meane time, charity forbids that this flaughter should be first in my intention; which is primarily bent upon my owne fafery, and the vindication of my owne just propriety! the blood that followes is but the unwilling attendant

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Cafe 1.

Exod. 22.

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of my defence: of the shedding whereof, God is so tender, that he ordained it onely to be inossensively done in a nightly robbery; where the purpose of the theese is likely to be more murtherous, and the act more uncapable of restitution.

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What then if the theefe, after his robbery done, ceafing any further danger of violence, shall betake himfelfe to his heeles, and run away with my money? In such a case, if the summe be so considerable as that it much imports my estate, how ever our Municipall lawes may censure it (with which, of old even a killing (se defendende) was no lesse then selony of death)

Dalton p.

Dec. 2.

my conscience should not strike me if I pursue him with all my might, and in hot chase so strike him, as that by this meanes I disable him from a further escape, for the recovery of my own, and if hereupon his death shal follow, however I should passe with men, God and my owne heart would acquit me.

Neither doubt I to say the like may be done upon a forcible attempt of the violation of the Chastity of either sexe: A case long agoe adjudged by the doome of nature it selfe in Marius the Generall of the Roman army (as Gicero tells us) clearly acquiting a young man for killing a Colonel that would have forced him in this kind.

Orat.pro Mil.

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But I may not affent to Dominicus Bannez, Petrus Navarrus , and Cajetan, (though grave authors) who hold, that if a man goe about upon false and deadly criminations to suborne witnesses against mee, to accuse me to a corrupted Judge, with a purpose to take away my life, in a colour of justice, if I have no other way to avoid the malice, I may lawfully kill him: It were a wofull and dangerous case, if every man might be allowed to carve himselfe of justice; Mere acculations are no convictions; How know I what God may worke for me on the Bench, or at the barte? what evidence he may raife to cleare mee? what confusion.

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Cale 1.
l'ann.q 64
a.7. dub.9.
Navar. l.2.
c.3.
Leffius l.2.
de Iure,
&c.c.9.
dub. 3.

Dec. 2.

fusion, or contradiction he may cause in the mouthes of the hired witnesses: what change he may worke in the Judge; what interposition of higher powers? There is a providence in this case to be relyed upon; which can and will bring about his own holy purposes, without our presumptuous, and unwarrantable undertakings.

CASE II.

Whether may I lawfully make use of a Duell for the deciding of my right, or the vindication of my honor?

I have long agoe spent my opinion upon this point, in a large epistolar discourse, which

which I find no reason to alter: thither I might refer you to spare my labour; but lest perhaps that should not be at hand; shortly thus:

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The fword in a private hand was never ordained to be a decider of any controversies, save this one, whether of the two is the better Fencer, nor yet that alwayes, fince The race is not to the swift, ner the battaile to the strong; as Solomon hath observed: It can be no better therefore, then a mere tempting of God, as Rodriguez justly censures it, to put our selves, or our cause upon so unwarranted a triall: I find but two practifes of it in the

records of Scripture; the

one, that famous challenge

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Eccles.9.

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Rodrig. Sum.caf. Tom. 1.

of

Sam. 17.

of Goliah, which that proud Philistim had not made, if he had not prefumed of his Giantly strength, and stature, so utterly unmatchable by all Ifrael, that the whole host was ready to give back upon his appearance; he knew the advantage so palpable, that none would dare to undertake the quarrell; and had still gone on to triumph over that trembling army, had not Gods inexpected champion, by divine instinct taken up the monster, and vanquisht him, leaving all but his head, to bedung that

The other was in that mortall quarrell betwixt Foab and Abner, on the behalf

earth, which had lately sha-

ken at his terrour.

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half of their two Masters, David and Ishbesherb, wherein Abner invites his rivall in honor, to a Tragicall play, (as he termes it) a monomachie of twelve single combatants on either part; which was so acted, that no man went victor away from that bloody Theater; Only it is observable, that in both these conslicts still the challengers had the worst.

In imitation of which latter, I cannot allow that which I find frequently done in the managing of publique hofility; that some consident Cavalier out of mere bravery of spirit craves leave to put himselfe forth before both armies, and (as in way of preface to an ensuing battaile) Case 2.
2 Sam. 2.

14.

Dec.2.

Antagonist; An act of more valor then judgment; whereof the undertaking is void of warrant; and the issue (lightly) of successe: whiles it pleaseth God commonly to punish presumption with a foyle; and the ominous miscarriage of one, proves a sad discouragement to many.

And if fingle fortitude be not triable this way, much lesse Justice in causes litigious; To make the sword arbiter of such differences, were no better then to revive the old Ordalian triall used by our Heathen Ancestors: Sith God hathen more ordained, nor promised to bless the one then the

the other; And reason it self tels us, in how ill a condition that righteous cause is, which must be carried by the sharper weapon, the stronger arme, the skilfuller fencer.

Now whereas there are two acts, as introductions into the field, a Challenge, and an Acceptation; both of them have their guilt, but the former so much more, as it hath in it more provocation to evill.

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I cannot therefore but wonder at, and cry downe the opinion of Bannez, and Cajetan, that a man sclandered by an unjust accuser, may justly challenge him the field, and vindicate himself by the sword; A doctrine, which

Dec. 2.

which if it were allowed, and accordingly practifed, besides that it would destroy the course of justice, and wrest revenge out of the hands of the Almighty, were enough to make the world an Aceldama; For who would not be his owne Judge for the Accusation; and his owne Executioner for the revenge?

There may yet seem more innocence in the Acceptation; which makes shew of a mere passive nature, and appeares to be extorted by the insolence of a provoking adversary, whose pressures are wont to receive such construction, as that the challenged party refusing, upon what ground soever, is in the vulgar

vulgar opinion proclaimed Caje 2. for base and recreant; and I must needs confesse, the irritation diminisheth the offence; but withall, how ever the Spanish and Italian Cafuists (whose Nations are wont to stand a little too highly upon the points of a mis-called honor) are wont to pass faire interpretations of the matter, I cannot but find it deeply guilty also: for what is this other, then a consent to fin by engaging in blood; which by a man wife and conscionable might be turned off with a just contempt, without imputation of cowardise: since the plea of conscience is able to beare downe the vaine fancies of idle sword-men: or, if that will

Dec. 2.

will not be taken, the false blurres that are cast upon a worthy mans reputation by vulgar breath, deserve no entertainment but scorne; or laftly, other means lie open to both parts for the proofe of a questioned valour, which in a lawfull way the challenged is ready to embrace; he walks not unprovided about the businesse of his calling, if he be fairly set upon, on equall termes, he shall make no doubt to defend himself: But to make a formall bufinesse of a quarrell, on either part, and to agree upon a bargain of blood-shedding, is wicked and damnable; and though both should come fairly off, yet the very intention to kill, is murther. This

This case is so cleare, that the Councell of Trent hath thought fit to denounce heavy sentences, and inflict sharp censures upon Emperours, Kings, States, and Potentates that shall give allowance to duels within their Dominions; pronouncing them ipfo jure excommunicate; and depriving them of those townes, cities, lands, (if held of the Church) where fuch unlawfull acts are made: And that those who either act, or patronize, and by their presence affist, countenance, or abett such combats, shall incurre the sentence of excommunication, the loss of all their goods, and perpetuall infamie; and if they dye in such quarrell, shall,

Case 2: Conc.Tr. Seff. 25. Rodriguez Tom.1. c.73.de duello. Dec.2.

shall, as selfe-murtherers, be debarred the priviledge of Christian buriall.

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Briefly therefore, neither your justice, nor your honor may depend upon the point of private swords; and if there can be no other remedy, you must rather suffer in either, then hazard your soule.

CASE III.

Whether may it be lawfull, in case of extremity, to procure the abortion of the child, for the preservation of the mother?

I feare want of true judgement renders too many of the weaker fexe groffely culpa-

culpable in matter of willing abortion; whiles, being not well principled either in nature, or grace, they think it not unlawfull, or at least, venially so, whether out of the feare of painfull childbirth, or for the avoidance of too great a charge, to prevent the fulnes of their conceptions; and therefore, either by over-vehement motion, or unwholfome medicine, are not unwilling to forestall nature, and to free themselves early of that web might in time prove their burden: Wherein they little know how highly they offend the Majesty of God in destroying his potentiall creature, and how heavy weight of guilt they lay upon

Dec, 2,

upon their foules, whiles they indevour to give an undue ease to their bodies.

Your question supposes an extremity; and surely such it had need to be, that may warrant the intention of such an event.

For the deciding whereof our Casuists are wont to distinguish double; both of the state of the conception; and of the nature of the receit: In the former; they confider of the Conception, either as it is before it receive life, or after that it is animated: Before it receive life, they were wont to determine, that howfoever it were no less then mortall fin, in a Physitian, to prescribe a medicinall receit to cause

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cause abortion, for the hi- Case 3. ding of a fin, or any outward secular occasion; yet for the preservation of the life of the mother, in an extreme danger, (I fay, before animation) it might be lawfull: But after life once received, it were an hainous fin to administer any such mortall remedy. The later Casuists are better advised; and justly hold that to give any fuch expelling or destructive medicine, with a direct intention to work an aborfement, (whether before, or after animation) is utterly unlawfull, and highly finfull: And with them I cannot but concurre in opinion; For, after conception wee know that naturally followes ani-

mation.

Dec.2.

Tertull. in Apol.c.g. Leff.l.z. c.g. du.10. mation, there is onely the time that makes the difference; which in this case is not so considerable, as to take off a sin: That of Tertullian comes home to the point, which both Covarravias and Lessius urge to this purpose: Homicidii festinatio est prohihere nasci; It is but an hastening of murder to hinder that we would be borne; Homo est qui futurus est; It is a man, that would be so: &c.

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Upon this ground we know that in a further degree of remotenesse, a voluntary selfe-pollution hath ever been held to have so much guilt in it, as that Angelus Politianus reports it as the high praise of Michael Verri-

Verrinus, that he would rather dye, then yeeld to it: how much more, when there is a further progresse made towards the perfection of humane life:

And if you tell me that the life of the mother might thus be preserved, whereas otherwise both shee and all the possibilities of further conceptions are utterly lost; I must answer you with that sure and universall rule of the Apostle, that we may not doe evill that good may come thereon.

The second consideration is of the nature of the receit, and the intention of the prescriber; There are prescripts that may, in, and of themselves tend towards

Case 3.

Ne se pollueret, mauit ipse
mori. Ex
Politiano
Gerard.
Voss.de otig. et progres. Adol.
1,3,6,18.

Rom. 3. 8.

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cure,

Dec.2.

cure, and may have ordinarily such an effect; but yet being used and applyed for the mothers remedy, may prove the loffe of the conception, being yet inanimate; these if they be given with no other intention then the preservation of the mothers life, may be capable of excuse; for that the inconvenience (or mischief rather) which followed upon the receits was accidentall, and utterly against the mind, and hopes of him that advised them.

But if the conception be once formed, and animated, the question will be so much more difficult, as the proceedings of nature are more forward: Whereupon it is, that

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that the Septuagint in their Translation (as Lessius well observes) have rendered that Mosaicall law (in Exod.21.) concerning abortions, in these terms. If a man strike a woman that is with childe, and she make an abortion, if the child were formed, he shall give his life for the life of the child; if it were

shall give his life for the life of the child; if it were not formed, he shall be punished with a pecuniary multito her husband: applying that to the issue, which the Vulgar Latin understands of the mother; and making

the supposition to be of a formation and life; which the Latin more agreeably

to the Originall, makes to be Death; and our English,

with * Castalion expresses by G 3 Mischiefe:

Case 3

Ubi supra.

Exod. 21.

The Septuagint feeme to have taken

(death) for

a diminutive of

a man : as Cornel. à Lapid.probably gueffes.

* Castal.
Si pernicies non fuerit: Ours,
If no mischiefe follow.

Dec.2.

Cornel.à Lap.in Exod.21. Mischiese : but whether the Mischiese be meant of the death of the mother, or of the late-living issue, the Scripture hath not declared: Cornelius à Lapide taking it expressy of the mothers death, yet draws the judgment out, in an equal length to the death of the child, once animated; making no difference of the guilt; since the infants soule is of no lesse worth, then hers that beares him.

In this case of the conception animated, I find the Casuists much divided; Whiles some more tender then their fellowes, will not allow in the utmost extremity of a dying mother, a medicine that may be directly

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Case 3.

rectly curative to be given her, if it should be with any apparent danger of the child; in case that the child may be probably drawne forth alive; which they doe upon this false and bloodily uncharitable ground, that the child dying without Baptisme, is liable to eternall damnation; which wofull danger therefore the mother ought to prevent, though with the certaine hazard of her own life: but the foundation of this judgement being unfound, (fince to doome the children of beleeving Parents inevitably to hell for the want of that which they are not possibly capable to receive, is too cruel and horrible) the structure must G 4 needs

Vel ut alii,
Quorum
anima certissime in
limbum descendunt
sine Baptisma.
Mart. Alphons. Viv.
Explan.
Bullæ de
Abort.

Dec. 2.

needs totter. These men whiles they professe themselves too carefull of the soul of the child (which yet may perhaps be safer then their owne) feem to be somewhat too hard-hearted to the body of the mother.

Rodr.Sum. To.1.ca.5. de Abort.

Others more probably hold, that if the case be utterly desperate; and it be certaine that both mother and child must undoubtedly perish if some speedy remedy be not had; it may then be lawfull to make use of fuch receits as may possibly give some hopes to save the mother, though not without some perill of the child.

But all this while, the intentions, and indevours must be no other then preferva-

tory;

Cafe 3.

God to order the events:
Shortly, no man that purposely procureth an abortion, as such, can wash his hands from blood; No woman that wilfully acts, or suffers it, (how ever the secrecy may exempt her from the danger of humane lawes can thinke to avoid those judgments of the righteous God, we he hath charged upon murderers.

I cannot here therefore forbeare to give the world notice of the impious indulgence of a late Pope in this kind; Sixtus quintus, who in our time fat in the See of Rome, finding the horrible effects of that liberty, which too many both fecular and G 5 reli-

Dec. 2.

religious persons tooke to themselves in this matter of abortion; in a just detestation of that damnable praclife, thought meet in much fervour of spirit to set forth his Bulla Cruciata; then web there was never a more zealous piece, published to the world; wherein that Pope pronounces all those which have any hand in the acting or procuring of this wicked fact, of the ejecting of conceptions, whether animate or inanimate, formed, or informed, by potions, or medicaments, or any other meanes whatfoever, to have incurred both the crime and punishent of man-slaughter: charging due execution to be done upon such persons accordingly:

Cafe 3.

cordingly: And withall in a direfull manner excommunicates them, and fends them to hell, (without repentance) referving the absolution solely to himselfe and his successors.

Now comes a late succesfor of his Gregory 14; who finding the sentence too unreasonably hard for his petulant, and thriftie Italians, and indeed, for all loose perfons of both fexes; mitigates the matter; and, as a Spanish Casuist expresses it truly, in the very first yeare of his Pontificate in a certaine Constitution of his, dated at Rome, the last day of May, 1591. delevit censuras, quas Sixtus V. imposu at contra facientes, procure ites, &c. abo-

Vid.Rodrig.ubi fupça. Dec. 2.
Constit.
Greg. 14.
Quadicit
qued quivis Confeffor approbatus ab
Ordinario
potest abfolvere à
peccato
abortus.
Ibid.

abolisht and took off those heavy censures, which Sixtus had imposed; and reduced the terrible punishments by him ordained to be inflicted unto a poore bare irregularity; and determines, that any Confessor allowed by the Ordinary, may absolve from this fin of procured abortion: By the fleightnesse of the censure, in effect, animating the fin: An act well becomming the mother of Fornications: After all web Pandarisme, let all good Christians know, and resolve the crime to be no lesse then damnable

Mart. Alphonf. Vivald. expli. Bull. Cruc. But withall, let me advise you, (with Martinus Vivaldus) that what I have herein written against the procurers

of

Case 3.

of abortions, may not be extended to the practife of those discreet Physitians, and Chirurgeans, who being called to for their aid in difficult and hopeleffe child-births, prescribe to the woman in travaile, such receits, as may be like to hasten her delivery, (whether the child be alive or dead:) forasmuch as the conception is now at the full maturity; and the indevour of these Artists is not to force an aborsement, but to bring forward a naturall birth, to the preservation of the mother, or the child, or both.

CASE

Dec. 2.

CASE IV.

Whether a man adjudged to perpetuall imprisonment, or death, may in conscience indevour, and practise an escape.

Hat the Civill or Common lawes have in this case determined for the publique good, comes not within the compasse of our disquisition: Let the Guardians, and Ministers of those lawes looke carefully to the just execution of them accordingly: The question is onely of the law of private conscience; how far that will allow a man to go in case of a sentence passed upon him, whether of death or bonds. And

And first of all; if such sentence be unjustly passed upon an innocent, no man can doubt, but that he may most lawfully by all just meanes worke his owne freedome: But if an offender, what may he doe? The common opinion of Casuists

pose use those helps of filing, or mining, which conduce to this purpose: Their ground is, that univerfall rule, and instinct of selfe-preservation, which is naturall to e-

is peremptory; That he that Quiretinetur in carsere propter aliquod delictum, &c. Rodrig. Sum. cap. 40.

is kept in prison for any offence whereupon may follow death, or losse of lim, whether the crime be publique or private, may lawfully flee from his imprisonment, and may for that pur-

very

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very creature; much more eminent in man, who is furnished with better faculties then the rest, for the working of his owne indemnity: Wherero is added that main consideration of Aquinas; That no man is bound to kill himselfe, but onely doomed to suffer death; not therefore bound to doe that upon which death will inevitably follow, weh is to wait in prison for the stroak, if he may avoid it; it is enough that he patiently submits to what the law forces upon him, though he doe not cooperate to his owne destruction: his sentence abridges him of power, not of will to depart : Whereupon they have gone so far, as to hold it

it in point of conscience not Case 4. unlawfull for the friends of the imprisoned, to conveigh unto him files, and cords, or other instruments usefull for their escape: But herein some better-advised Doctors have justly differted from them; as those, whose judgment hath not beene more favourable to malefactors, then dangerous and prejudiciall to the Commonwealth: for how fafe soever this might seeme in lighter trespasses, yet if this might be allowed as in conscience lawfull to be done to the rescue of murtherers, traytors, or fuch other flagitious villains, what infinite mischiefe might it produce ? and what were this other then to invite men

Divers practicall Cases

Dec. 2.

to be accessary to those crimes, which the law in a due way intends to punish? Certainely, by how much a more noble and laudable act of Justice it is, to free the fociety of men from fuch wicked miscreants, by so much more finfull and odious an office it were, to use these sinister meanes for their exemption from the due course of Justice; But howfoever for another man to yeeld fuch unlawfull aid, is no better then a foule affront of publique Justice, and enwrappes the agent in a partnership of crime; yet the law of nature puts this liberty upon the restrained party himselfe, both to wish and indevour his owne deliverance:

verance: Although not so; but that if the prisoner have engaged himselfe by solemne promise, and oath to his keeper, not to depart out of his custody; honesty must prevaile above nature; and he ought rather to die, then violate that bond which is stronger then his irons: Very Heathens have by their example taught us this lesson; To regard our fidelity, more then our life: Thus it should be, and is, with those that are truly Christian and ingenuous, under what ever captivity; but in the case of gracelesse and felonious persons, Gaolers have reason to look to their bolts and lockes; knowing (according to the old rule of wife Thales) that he

Dec. 2.

he who hath not stuck at one villanie, will easily swallow another; perjury will easily downe with him, that hath made no bones of murther.

But where the case is entire, no man can blame a captive if he would be free; and if he may untie the knot of a cord, wherewith he was bound; why may he not unrivet, or grate an iron wherewith he is fettered? for so much as he is not bound, to yeeld, or continue a consent to his owne durance: This charge lies upon the keeper, not the prisoner.

A manthat is condemned to perish by famine, yet if he can come by sustenance may receive, and eat it: That Athenian malefactor,

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in Valerius Maximus, sentenced to dye by hunger, was never found fault with, that he maintained himselfe in his dungeon by the brests of his good-natur'd daughter.

And if a man be condemned to be devoured by a Lion, there can be no reason why he should not (what he may)resist that furious beast, and save his owne life.

But when I see our Romish Casuists so zealously tender in the case of Religious persons, as that they will not allow them upon a just imprisonment to stirre out of those grates whereto they are confined by the doome of their Prelates; And when I see the brave reso-

Case 4. Val.Max. l.s. Dom. Sot. de Jure, &c.l.s.q.s. Dec.2.

resolutions of holy Martyrs, that even when the doores were set open, would not flee from a threatned death, I cannot but conclude, that whatsoever nature suggests to a man, to work for his own life of liberty, when it is forfaited to Justice, yet that it is meet and commendable in a true penitent, when he finds the doome of death or perpetuall durance juftly passed upon him, humbly to Submit to the sentence; and not to intertaine the motions and means of a projected e vasion: but meekly to stoop unto lawful authority, and to wait upon the issue whether of Justice, or Mercy: & at the worst, to say with him in the Poet, Merui, nec deprecor.

CASE

Cafe 5.

CASE V.

Whether, and how farre a man may be urged to an Oath.

N Oath, as it is a facred thing, so it must be no otherwise then holily used; whether on the part of the giver, or taker; and therefore may neither rashly be uttered, nor unduly tendered upon fleight, or unwarrantable occasions: We have not to doe here with a promissory oath, the obligation whereof is for an other inquifition; It is the affertory oath that is now under our hand, which the great God by whom we sweare, hath ordained to be an end of controversies; At the mouth of

two

Dec. 2. Deut. 19. 15. 17.6. two or three witnesses shall the matter be established: As for secular titles of mine, or thine, the propriety of goods, or lands, next after written evidences, testimonies upon oath must needs be held most sitly decisive; the only scruples are wont to be made in causes criminals.

Wherein surely we may lay this undoubted ground, that no man is to be proceeded against without an accuser, and that accusation must be made good by lawfull witnesses: A Judge may not cast any man upon the plea of his owne eye-sight; should this liberty be granted, innocence might suffer, and malice triumph: Neither may any man be condemned upon

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upon heare-say; which how Case 5. commonly false it is, daily experience sufficiently evinceth

On the other fide, men are apt enough to connive at each others wickednesse; and every man is loath to be an Informer, whether out of the envy of the office, or out of the conscience of his owne obnoxiousnesse.

And yet thirdly, it is requisite that care should be taken, and all due means used by authority, that the world may not be over-run with wickednesse; but that vice may be found out, repressed, punished.

There cannot, fourthly, be devised a fairer, and more probable course for the effe-

Н cting Dec.2.

cting hereof, then by the discovery upon oaths of the Officers and Jurois in Affices, and Sessions; and of Church-wardens, and Side-men in visitations.

The ground of all prefentments to, or by these men must be either their owne knowledg, or publique same, or an avowed information. Any of these gives a lawfull hint to the Judge, whether Ecclesiastical or Civill, to take sull triall of the cause and person.

Knowledge is alwayes certain, but fame is often a lyer; and therefore every idle rumour must not be straight taken upon trust; the inconvenience and injury whereof I have often seene; when

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when fome malicious person defiring to doe a despight to an innocent neighbour, raises a causelesse sclander against him, whispers it to some disaffected goffips, this flyes to the eare of an Apparitor; he straightruns to the office, & fuggests a publique fame; the honest man is called into the Court; his reputation is blurred in being but fummoned; and after all his trouble and disgrace hath his amends in his owne hands.

The rule of some Casuists, that tenne tongues make a fame, is groundlesse and infufficient; neither is the number so much to be regarded as the quality of the persons. If a whole pack of debauched companions shall H 2

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Dec . 2.

conspire to staine the good name of an innocent (as we have too often knowne) it were a shamefull injustice to allow them the authors of a fame: the more judicious Doctors have defined a publique fame by the voyce of the greater part of that Community, wherein it is spread, whether towne, parish, city: and therein of those that are discreet, honest, well-beha-We are wont to fay, Where there is much smoke, there is lightly some fire: an universall report from such mouthes, therefore, may well give occasion to a further inquiry. If any mans zeale against vice will make it a matter of instance, the case is cleare, and the proceeding unquesti-

unquestionable; But if it be Case 5. matter of mere office, the carriage of the processe may be liable to doubt; Herein it is meet such course be taken, as that neither a notorious evill may be smothered, nor yet innocence injured: To which purpose the most confident reporter may be called upon (because fame hath too many tongues to speake at once) to lay forth the grounds of that his whispered crimination; and if the circumstances appeare pregnant, and the fuspicions strong, I see not why the Ecclesiasticall Judge (for with him onely in this case I professe to meddle) may not convent the person accused, lay before him the crime which H 3

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which is fecretly charged upon him; and either upon his ingenuous confession, enjoyne him such satisfaction to the scandalized congregation as may be most fit; or upon his denyall urge him to cleare himfelfe by lawfull witnesses, of the crime objected; Or why he may mot, if he fee further cause, appoint a discreet and able profecutor to follow the businesse in a legall way; upon whom the accessed, if he be found guildesse, may right himfelfe.

But all this while, I finde no just place for an oath to be administred to a man for his owne accusation; which certainly, is altogether both illegal, ged

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illegal, and unreasonable; If a man will voluntarily offer to cleare himselfe by an Oath, out of the affuredneffe of his own innocence, he may be allowed to be heard, but this may neither be pressed to be done, nor yet conclusive, when it is done; for both every man is apt to be partiall in his owne case, and he that durst act a foule fin will dare to face it. It was ever therefore lawfull (even when Ecclefiafticall Inquisitions were at the highest) for a man to refuse answer to such queftions upon oath, or otherwife, which tended to his owne impeachment, as unjustly, and unwarrantably proposed: and it was but H 4

Dec. 2. Silveftr, V. Correct. Dom. Sor. l.5.de Jure, 9.4. Leff. de Iudice l. 2. c. 29. a yong determination of A-quinas, when he was onely a Bachelour, in the Generall Chapter at Paris, contradicted by all the ancient Graduates there, that when the crime is notorious, and the authour unknowne, the fecret offender is bound upon his Ordinaries charge and command, to reveale himfelfe.

Even the Spanish Casuists, the great savourers and
abettors of the Inquisition,
teach that the Judge may
not of himselfe begin an inquiry, but must be led by
something which may open
a way to his search, and as it
were force him to his proceeding, ex officio, as publique notice, infamie, common

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mon suspicion, complaint; otherwise, the whole processe is void in law, although herein some of them goe too far in favour of their great Diana, that where the crime is knowne, and the author unknowne, the Judge may in a generality inquire of him that did it, and if he have private information (though without any publique fame foregoing) he may in some cases, raise a particular inquifition upon the party, and call him to defend himselfe; which course certainly, gives too much advantage to private malice; and opens too much way to the wronging of Innocence. The faire way of proceedings in all ChriDec. 2.

stian Judicatures, should be, by accuser, witnesse, and Judge; in distinct persons, openly knowne; the accuser complaines, the witnesse evinceth, the Judge sentences: The one may not be the other; much lesse all three: Were that to be allowed, who could be innocent:

When a witnesse then is called before a competent Judge, to give evidence upon oath concerning a third person, in a matter cognoscible by that Jurisdiction, he is bound to sweare in truth, in judgement, and in righteousnesses, as for his own concernments, he must referre himselfe to the testimonies and oaths of others.

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CASE

Cafe 6.

CASE VI.

Whether a Judge may upon allegations, proofes, and evidences of others, condemne a man to death, whom he himselfe certainly knowes to be innuctor.

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The question hath undergone much agitation;
The streame of all ancient Divines, and Casuists runs upon the affirmative; their ground is, that the Judge as he is a publique person, so in the seat of Judicature he must exercise a publique authority; and therefore waving his private knowledge and interest, must sentence according to the allegations and proofes brought before him;

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Dec. 2.

him; fince he is a Judge of the cause, not of the law; whereof he is to be the servant, not the master: There he sits not to speake his own judgement, but to be the mouth of the law; and the law commands him to judge according to the evidence; the evidence therefore being cleare and convictive, the doome can be no other then condemnatory.

For my part, I can more marvell at their judgement herein, then approve it; professing for the negative, with some fewer and later Authors: upon these sure

grounds:

It is an evident and undeniable law of God which must be the rule of all Judges;

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Case 6. Exod, 23.7

The innecent and the righteteous flay thou not; This is a Law neither to be avoided, nor dispensed with: Accufations, and false witnesses cannot make a man other then innocent; they may make him to seeme so; in fo much as those that know not the cause exactly, may perhaps be mif-led to condemne him, in their judgements: But to the Judge, whose eyes were witnesses of the parties innocence, all the evidence in the world cannot make him other then guiltleffe; so as that Judge shall be guilty of blood, in flaying the innocent, and righteous.

Secondly, the law of judging according to allegations

gations and proofes is a good generall direction in the common course of proceedings; but there are cases wherein this law must vaile to an higher, which is the law of conscience: Woe be to that man who shall tye himselfe so close to the letter of the law, as to make shipwrack of conscience; And that bird in his bosome will tell him, that if upon what ever pretences, he shall willingly condemne an innocent, he is no better then a murtherer.

Thirdly; it is not the bare letter of the law that wife men should stand upon; but the drift and intention of the law, of that, we may in some sense say as the Apostle did of

Cafe 6.

an higher law; The letter killeth: Now every reasonable man knows that the intention of the law, is to save and protect the Innocent; to punish onely the guilty: The Judge therfore shal be a perverter of law, if, contrary to his knowledge, he shall follow the letter against the intention, in condemning an Innocent.

Let no man now tell me, that it is the law that condemnes the man, and not the Judge; This excuse will not serve before the Tribunal of heaven; The law hath no tongue; It is the Judge that is lex loquens; If he then shall pronounce that sentence which his own heart tells him is unjust and cruell, what is he but an officious

ficious minister of injustice? But, indeed, what law ever said, Thou shalt kill that man whom thou knowest innocent, if salse witnesse will sweare him guilty? This is but a salse glosse set upon a true text, to countenance a man in being an instrument of evill.

What then is in this case to be done? Surely, as I durst not acquit that Judge, who under what ever colour of law shouldcast away a known Innocent, so I durst not advise against plaine evidences and stat depositions, upon private knowledge, that man to be openly pronounced guiltlesse; and thereby discharged; for as the one is a grosse violation of justice;

Cafe 6.

so were the other a publique affront to the law; and of dangerous consequence to the weale-publique : Certainly, it could not but be extremely unsafe, that such a gappe should be opened to the liberty of judgement, that a private breft should be opposed (with an apparent prevalence) against publique convictions: Our Cafuifts have beaten their brains to find out some such evasions, as might save the innocent from death, and the Judge from blood-guiltines: Herein therefore they advise the Judge to use some secret meanes to stop the accusation or indictment; (a course that might be as prejudiciall to justice, as a false sentence

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To lift the witnesses apart, as in Sufammaes case, and by many fubtile interrogations of the circumstances to find their variance or contradiction. If that prevaile not, Cajetan goes fo farre, as to determine it meet (which how it might stand with their law, he knowes, with ours it would not) that the Judge should before all the people give his oath, that he knows the party guiltleffe; as whom he himself saw at that very hour in a place far diftat from that, wherein the fact is pretended to be done: Yea Dominicus à Soto could be content (if it might be done without fcandall) that the prisoner might secretly be suffered to slip out of the gaol,

Dom.à Sot. de Iure, & c. l., 5. qu.4.

Cafe 6.

gaol & fave himfelf by flight. Others think it the best way, that the Judge should put off the cause to a superiour Bench; & that himfelf should (laying afide his fcarlet)come to the Barre, and as a witnelle avow upon oath the innocence of the party, and the fallity of the acculation: Or laftly, if he should out of malice, or some other fini-Aerends (as of the forfaiture of some rich estare be pressed by higher powers to paffe the fentence on his owne Bench, that he ought to lay downe his Commission, and to abdicate that power hec hath, eather then to fuffer it forced to a willing injustice.

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And truly were the case mine, after all fair and law-

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Etenim
quod bomo
qui officio
fuo vivit
debeat tantam jacturam facere,
durum creditu est.
Dom, Sor.
ubi supra.

full indevours to justify the innocent, and to avoid the sentence, I should most willingly yeeld to this last resolution: Yea rather my selfe to undergoe the sentence of death, then to pronounce it on the knowen-guiltless; hating the poore pufillanimity of Dominicus à Soto, that passes a nimis creditu rigidum, upon so just a determination; and is so weakly tender of the Judges indemnity, that he will by no meanes heare of his wilfull deferting of his office on fo capitall an occasion.

In the maine cause of life and death, I cannot but allow and commend the judgment of Leonardus Lessius; but when the question is of

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matters Civill, or less criminall, I cannot but wonder at his flying off; In these wherein the business is but pecuniary, or banishment, or loss of an office, he holds it lawfull for the Judge, (after he hath used all meanes to discover the falsness of the proofes, and to hinder the proceedings, if thus he prevailes not) to pass sentence upon those allegations and probations, which himselfe knowes to be unjust.

The reasons pretended are as poor as the opinion; For, saith he, the Commonwealth hath authority to dispose of the estates of the Subjects, and to translate them from one man to another, as may be found most availing to

Case 6. In causis civilibus et minus criminalibus.

Leff.de Iure,&c. l.2.
de Judice
Dub.10.
Quia resp.
babet autboritatem
disponendi,
&c.

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the publique good, and here there appeares just cause so to doe, lest the forme of publique judgements should be perverted, not without great scandall to the people; neither is there any way poffible to help this particular mans inconvenience & loss; therefore the Commonwealth may ordaine that in fuch a case the Judge should follow the publique form of Judicature, though hereby it falleth out that a guiltleffe man is undone in his fortunes; & yer his cause known to be good by him that condemnes it. Thus he.

But what a loose point is this? why hath not a man, as true propriety in his estate as in his life? or what autho-

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Cafe 6.

rity hath the Commonwealth, causeledy to take away a mans substance or inheritance (being that he is the rightfull owner) more then, a peece of himselfe ? When his patrimony is fetled upon him and his in a due course of law and undoubted tight of possession, what just power can claime any fuch interest in it as without any ground of offence to disposfess him? Or what necessity is there that the forme of publique judgements should be perverted, unless an honest defendent must be undone by falle sentence? Or rather is not the forme of publique judgement perverted, when innocence fuffers for the maintenance of a formality?

Or

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Or how is the Judge other then a partner in the injury, if for want of his seasonable interposition a good cause is lost, and a false plea prevails:

That therefore, weh in the fecod place he alledgeth, that the Subject can have no reafon to complain of the Judg, for as much as it is out of his power to remedy the case, and to pass other sentence then is chalked forth by the rule of law; might as well be alledged against him in the plea of life and death, wherein he will by no means allow the Judge this liberty of an undue condemnation; neither is there any just pretence why an honest and welminded Judge should be so sparing in a case of life, and **Sø**

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so too prodigall in matter of Case 6. livelyhood.

As for his third reason. that the mis-judgement in case of a pecuniary damage or banishment, may be after-wards capable of being reversed, and upon a new Traverse the cause may be fetcht about at further leasure : whereas death once inflicted is past all power of revocation; it may well inferre that therefore there should be fo much more deliberation, and care had in passing sentence upon capital matters, then civill, by how much life is more precious, and irrevocable, then our worldly fubstance; but it can never infer that injustice should be tolerable in the one, not in the

other.

other. Justice had wont to be painted blindfold, with a paire of seales in her hand; wherefore else, but to imply that he who would judge aright, must not looke upon theiffue or event, but must weigh impartially the true state of the cause in all the grounds, and circumstances thereof, and sentence accordingly. To fay then that a Judge may passe a doome formally legall, but materially unjust, because the case upon a new fuit may be righted, were no other then to fay, I may lawfully wound a man, because I know how to heale him againe.

shortly therefore, whether it be in causes criminall, or civill, whether concerning

life,

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Cafe 7.

life, or estate, let those who sit in the seat of Judicature, as they will answer it before the great Judge of the world, resolve (what event soever sollow) to judge righteous judgement, not justifying the wicked, not condemning the innocent, both which are equally abominable in the light of the Almighty.

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diod CASE VII.

Whether, and in what cases am I bound to be an accuser

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To be an accuser of others, is a matter of much envy, and detestation, in so
much as it is the style of the
Devill himselfe to be accusa-

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Revel, 12. 10.

ter fratrum, an accuser of the brethren: Yet not of his own brethren in evill; It was never heard that one evill spirit accused another; but of our bretbren; it was a voice from heaven which called him so: Saints on earth are the brethren of the glorious spirits in heaven; It is the wickednesse of that malicious spirit, to accuse Saints: But though the act be grown into hatred, in respect both of the agent and of the object; yet certainly there are cases wherein it will become the Saints to take upon them the person, and office of accufers.

Accusation therefore is either voluntary, or urged upon you by the charge of a fu-

periour.

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periour. Voluntary is either Cafe 7. fuch as you are moved unto by the conscience of some hainous and notorious crime committed, or to be committed by another, to the great dishonor of God, or danger of the common peace, whereto you are privy: or fuch, as whereunto you are tyed by some former engagement of vow, or oath : In the former kinde; a worthy Divine in our time travailing on the way, sees a leud man committing abominable filthinesse with a beast; the sin was fo foule and hatefull, that his heart would not fuffer him to conceale it; hee therefore haftens to the next Justice, accuses the offender of that fo unnaturall villainy;

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the party is committed, endicted, and upon so reverend (though single) testimony found guilty.

Or, if in the case of a crime intended, you have fecret, but fure intelligence, that a bloody villaine hath ploted a treason against the sacred person of your Soveraigne, or a murther of your honest neighbour; which he refolves to execute; should you keep this fire in your bosome, it might justly burne you. Whether it be therefore for the discovery of some horrible crime done, or for the prevention of fome great mifchiefe to be done, you must either be an accuser, or an acceffary.

The obligation to accuse

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is yet stronger where your former vow or oath hathfore ingaged you to a just discovery; You have sworn to maintaine and defend his Majesties royall person, state, dignity; and to make knowne those that wilfully impugne it; if now, you shall keep the secret counsels of such wicked designements, as you shall know to be against any of these, how can you escape to be involved in a treason, lined with perjury:

These are accusations which your conscience will fetch from you, unasked, But if being called before lawfull authority, you shall be required upon oath, to testifie your knowledge even concerning offenders, of an

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inferiour nature; you may not detract your witnesse, though it amount to no lesse then an accusation. Yet there are cases, wherein a testimony thus required, tending to an accusation, may be refused; As in case of duty, and nearenesse of naturall, or civill relation; It were unreasonably unjust for a man to be pressed with interrogations, or required to give accusatory testimonies in the case of parents, or children, or the partner of his bed: Or if a man out of remorfe of conscience shall disclose a secret sin to you formerly done, in a defire to receive counfaile, and comfort from you; you ought rather to endure your soule to be fetcht out of your body then

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then that secret to be drawne | Cafe 7. out of your lips: Orif the question be illegall, as those that tend directly to your owne prejudice; or those which are moved concerning hidden offences, not before notified by publique fame, or any lawfull ground of injury, which therefore the Judge hath no power to aske in these cases, if no more, the refulall of an acculation, though required, is no other then justifiable.

But where neither the conscience of the horridnesse of a crime done; nor prevention of a crime intended; nor duty of obedience to lawfull authority; nor the bond of an inviolable pre-ingagement, call you to the Barre; it is

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not a more uncharitable, then thanklesse office to be an accuser: Hence it is that Delators, and Informers, have in all happy and well groverned States been ever held an infamous and odious kinde of cattell: A Tiberius, and a Domitian, might give both countenance and rewards to them, as being meet factors fortheir tyranny, but a Velpafian, and Titus, and Antoninus Pins, and Macrinus, or what ever other Princes carried a tender care to the peace and welfare of their subjects, whipt them in the publique Amphitheater, and abandond them out of their dominions, as pernicious, and intolerable. And as these mercenary Flies, whether of State, or of Religion.

Cale 7

Religion, are justly harefull, next to the publique executioners; fo certainly, those buhe spirited men, which out of the itching humour of medling, run from house to house, with tales of private detraction, may well challenge the next roome in our derestation. This together with the other, is that which God so strictly forbids in his Law; Thou shalt not goe up and down as a Taleboarer amongst thy people, neither that they fland against the blood of thy neighbour : I am the Lord : A practife which wife Solomon, though a great King; and (as one would thinke) out of the reach of tongues, cryes downe with much feeling bitternesse; The words of a Tale-

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Levit. 19.

Divers practical Cafes

Dec. 2. Prov. 18.8.

Prov. ii. 13. 20. 19. 26.20. 26.21. Talebearer are as wounds, and shey goe downe into the inner-most parts of the belly; no lesse then five severall times in his divine Proverbs, inveighing sharply (as if himselfe had been stung in this kind) against these close, back-biting calumniations.

Shortly then, accuse when you are forced, either by the foulenesse of the fact, or the necessity of your duty: otherwise reserve your tongue for better offices.

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CASE VIII.

Whether a prisoner indicted of a felonious act, which hee hath committed, and interrogated by the ludge concerning the same, may stand upon the deniall, and plead not guilty.

The Casuists vary; and out of respect to their owne Lawes, are much perplexed in their resolutions: making the great scruple to be in the Juridicall interrogations, which (if the Judge have not proceeded in the due formes of law required in such cases) may warrant the offenders deniall; and secondly, making difference of the quality of the offence, and danger

Rodriguez Tra&. Ordinis Judicialis. cap. 10.

Sotus I.5. q.6.de Justinia Rei, Art. 1.

danger of the punishment; which if no leffe then capitall, may (fay they) give just ground to the accused party, either to conceale the truth, or to answer with such amphibolies, and equivocations, as may serve to his own prefervation; in which courfe, naturall equity will beare him out, which allowes every man to stand upon his owne defence: And the case I perceive is aggravated in forain parts, as by the Rack, so by an Oath administred to the person accused, (which they call furamentum calumnia) which Lessius justly calls a spirituall torture, by the vertue whereof, he is folemnly utged, not to deny what he knowes a or beleeves to be true,

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true, concerning the businesse questioned; A practise, which I cannot blame Lessius, if he professe to wish, that the Pope, and all secular Princes, would joine together to abrogate; as being an evident occasion of much perjurie. To lay downe and determine the case as it stands with us

and to averre a wilfull lye, cannot be other then a fin.

mised:

in our ordinary proceedings of justice; it must be pre-

betwixt concealing a Truth, and denying it.

3. It may be sometimes lawfull to conceale some Truths, though never lawfull to deny, or contradict them.

Cafe 8.

Les.de jur. La.cap. 13. dub.3.

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4. No man can be bound directly to accuse himselfe.

rall equity, that a man for the faving of his life should use the helpe of all evasions that are not finfull.

of. It cannot be finfull to put himselfe upon a legall triall in a case importing his life.

7. There is no place for a legall triall, where there is an absolute confession of guiltinesse.

These positions being prerequired. I say, that it is lawfull for the prisoner, though convinced in his conscience of the fact; yet to plead not guilty to the indictment at the Barre: for as much as he doth therein, according to the

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Cafe 8.

the sense both of the Judge, and Jury, onely hide and keep back that Truth; the finding out, and eviction whereof, lyes upon their further search and proofe; so as he doth, in pleading not guilty, in effect as good as fay; What ever I finde in my felfe, I have no reason to confesse my guiltinesse; I stand upon my lawfull defence; and cast my felf upon my just triall; Yeelding my selfe onely so farre guilty as your evidence, and proofes can make mee: let justice passe upon me, I have no reason to draw on my owne condemnation: The plea thus construed is lawful. and just; wherein not the shuffling equivocations of the offendor, but the upright verdict

verdict of a legall Jury than carry the cause: to which purpose, that which sounds as a deniall in the accused, is nothing else but a professed referring himselfe to a juridicall triall of that fact which he is not bound to confesse.

But when the hand of God hath once found the man out in his fin; and he findeshimfelf legally convinced of his crime; it greatly behoves him(as Foftwa charged Achan after the lot had discovered his fin) to give glory to God, in a free and full confession of his wickednesse, and to be more open and ingenuous in his acknowledgment, then he was close, and reserved in his plea: wherein as he shall difcharge his conscience to that great

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great and holy God, whom

he hath offended, so he shall

Cafe 8.

thus tender some kinde of poore fatisfaction to that fociety of men, whom hee hath scandalized by hiscrime. Inwhich regard I cannot but marvell at the strange determination of learned Azpilinesa, the oracle of Confeffaries, who teaches, that the prisoner, who being rightly interrogated by the Judge, stood stiffly in deniall of the fact, and is upon his Condemnation, carried to his execution, is not bound at his death to confesse the crime to the world, if he have before fecretly whispered it in the eare of his ghostly father, and by him received abfolu-

Marr. Azpil. Navar. enchirid. cap.25. num.38.

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A sentence that allowes the smothering of truthes, and the strangling of just satisfaction to those who are concerned, as patients, in the offence; and lastly, highly injurious to publique Justice; whose righteous sentence is by this meanes left questionable, and obnoxious to unjust censure.

How much more requisite were it that a publique confession should, in this case, save the labour of a private, whereby certainly, the soule of the offender would be more sensibly unloaded, justice better vindicated, more glory would accrew to God; and to men, more satisfaction.

But how ever it be lawfull for

Cafe 8:

for the accused to stand upon these points of legality in the proceedings against him : yet for my owne part; should I be so farre given over, as to have my hand in blood; and thereupon be arraigned at the barre of publique Justice; I should out of just remorfe be the first man that should rise up against my self; and (which in other mens cases were utterly unlawfull) be my owne accuser, witness, and Judge: and this disposition I should rather commend in those, whose conscience hath inwardly convicted them for haynously criminous: that fince they had not the grace to resist so flagitious a wickedness; they may yet endevour to expiate it, before men,

2 Sim. 20,

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cessary in relation to peace; onely, as that without which so great a blessing cannot be had: As the wise woman said to feel, they should sinst treat with the men of Abel, ere they smite: and upon the charge of the Lord of hosts, conditions must first be tendred even to heathen enemies, be-

fore

Cafe 9.

fore any acts of hostility shall be exercifed where this which is the worst of all remedies. proves needfull, if you aske how farre it is lawfull to ingage; I must aske you. (ere I can returne answer) first of the justice of the quarrell: for furely, where the warre is knowne to be unjust, the willing abettors of it cannot wash their hands from blood: To make a warre just (as our Casuists rightly) there must be a lawfull authority to raife it; a just ground whereon to raife it due formes and conditions in the raifing, managing, and cessation of it: That no authority less then supreame can wage a warre, it is cleare in nature; for that none other besides it can have l

have power of life and death; which both must lye at the publique stake in warre.

That none but a just and weighty cause can be the ground of a warre, every mans reason apprehends; for how precious a blessing had that need to bee, that is held worth the purchasing withthe price of so much bloud; & how heavy a curse must that needs be, which can onely be remedied, or prevented by so grievous a judgment as war?

That due termes and conditions are requisite to be offered ere warre be undertaken; and observed in the managing, and ceasing of it, humanity it selfe teacheth us; without which men should run upon one another, with

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no lesse fury and disorder then beasts; not staying for any capitulation but the first advantage; nor terminating their discord in any thing but utter destruction.

Where all or any of these are wanting, the warre cannot be just and where it is knowne not to be such; woe be to those hands that are willingly active in prosecu-

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Now the care of all these three maine requisites must lye chiesly upon that Power which is entrusted by the Almighty with the overruling of publique affaires: For the subject, as he is bound to an implicit reliance upon the command of the supreme power; so (unlesse it be in a

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case notoriously apparent to be unjust) must yeeld a blindfold obedience to authority; going whither he is led, and doing what he is bidden; But if the case be such, as that his heart is fully convinced of the injustice of the enterprise, and that he clearely findes that he is charged to smiteinnocence and to fight against God , I cannot blame him, if with Sauls footmen (when they were commanded to fall upon the Priests of the Lord) he withhold his hand, and craving pardon, show lesse readinesse to act, then to fuffer.

In the second place, I must aske you with what intentions you addresse your selfe to the field; If it be out

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Case 9.

of the conscience of maintaining a just cause, if out of a loyall obedience to lawfull authority: I shall bid you, go on, and prosper: but if either malice to the parties oppo-fed, and therein defire of revenge, or a base covetousnesse of pay, or hope and defire of plunder have put you into armes: repent and withdraw: For what can be more fordid, or cruell, then to be hired for daies-wages to shed innocent bleod ? Or what can be more horribly mifchievous for a man, then to kill, that he may steale?

Upon your answer to these questions it will be easie for me to returne mine; In a just quarrell, being thereto lawfully called, you may

K 2 fight

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fight; warrantable authority hath put the fword into your hand, you may use it. But take heed that you use it with that moderation, and with those affections that are meet: Even an authorized hand may offend in striking; Magistrates themselves, if there be revenge in their executions, doe no other then murder: Far be it from you to take pleasure in blood; and to enjoy another mans de-Aruction : If (especially in those wars that are intestine) you shall mingle your teares with the blood which you are forced to spill, it may well become Christian fortitude

Shortly; do you enter into your armes, imprest, or voluntary! If the former, you have

Case 9%

have nothing but your owne heart to looke unto for a fit disposition; That Power, whom you justly obey, must answer for the cause; If the latter, you have reasondiligently to examine all the neceffary points, of the Power, of the cause, of your intentions: as well confidering that in a warre it is no lesse impossible that both sides should be in the right, then that in a contradiction both parts should be true: Here therefore your will makes it selfe the Judge of all three; and (if any of them faile) leaves you answerable for all miscarriages; so as you had need to be carefully inquisitive, in this case, upon what grounds you goe; that so (what-K 3

Dec. 2.

(whatsoever may befall) a good conscience may beare you out in the greatest difficulties, and saddest events that are wont to attend upon warre.

CASEX.
Whether and how farre a man may act towards his owne
Death.

Directly to intend or indevour that which may worke his owne death, is abominably wicked, and no lesse then the worst murder.

For if a man may not kill another, much leffe himselse; by how much he is nearer to himselse then to another: and certainly if we must regulate

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our love to another by that to our selves, it must follow that love to our selves must take up the first roome in our hearts: and that love cannot but be accompanied

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with a detestation of any thing that may be harmfull to our selves. Doubtlesse, many that can be cruell to another are favourable e-

nough to themselves; but never man that could bee

cruell to himselfe would be sparing of anothers bloud.

To will or attempt this is highly injurious to that God, whose we onely are; who hath committed our life as a most precious thing to our trust, for his use, more then our owne; and will require from us an account of our

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Dec.2.

managing of it, and our parting from it. It is a foule misprission in those men, that make account of themselves as their owne, and therefore that they are the absolute Lords of their life: Did they give themselves their owne being; had they nothing but meere nature in them; can they but acknowledge an higher hand in their formation, and animating? What a wrong were it therefore to the great Lord, and giver of life, to steale out of the world, without his leave that placed us there? But much more if Christians, they know themselves, besides, dearely paid for; and therefore not in their owne difpofing, but in his that bought them.

them. Secondly, most de Cafe 10, sperately injurious to our selves, as incurring thereby a certaine damnation (for ought appeares to lookers on) for ever, of those soules which have wilfully broken Gods more easie, and temporary prison, to put themselves upon the direfull prifon of Satan to all eternity.

Nature it selfe, though not enlightned with the knowledge of the estate of another world, found cause to abhorre this practife : However the Stoicall philosophers, and some high Roman spirits following their doctrine, have been liberall of their lives; the Thebans of old professed detestation of this worst of prodigalities K 5

Dec. 2.

And the Athenians enacted that the hand which should be guilty of fuch an act, should be cut off, and kept unburied; And it was wifely ordained by that Grecian Commonwealth, when their Virgins (out of a peevish discontentment) were growne into a selfe-killing humour, that the bodies of fuch offenders should be dragged naked through the streets of the city; the shame whereof stopped the course of that mad refolution.

It is not the heaviest of crosses, or the sharpest bodily anguish that can warrant so soule an act. Well was it turned off by Antisthenes of old, when in the extremity of his paine he cried out; Oh who

who will free me from this torment! and Diogenes reach't him a poynard, wherewith to dispatch himselfe: Nay said he, I said, from my tor-

ment, not from my life: as well knowing it neither fafe, nor easie, to part with our

felves upon fuch termes.

Farre, farre be it from us to put into this ranke and file those worthy Martyrs, which in the fervor of their holy zeale have put themselves forward to Martyr-dome, and have courageously prevented the lust and fury of Tyrans, to keepe their chastity, and faith inviolable. I looke upon these as more sit objects of wonder, then either of censure, or imitation. For these (whom week

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may well match with Samp. (on, and Eleazer) what Gods spirit wrought in them, he knowes that gave it; Rules are they by which we live,

not examples.

Secondly, However we may not by any meanes directly act to the cutting off the thred of life; yet I cannot but yeeld with learned Lessius, that there may fall out cases, wherein a man may (upon just cause) doe, or forbeare fomething whereupon death may indirectly enfue: Indirectly, I say, not with an intention of fuch issue. For it is not an universall charge of God, that no man should upon any occasion expose his life to a probable danger; If so, there would

Leff de Jure 1.2; c.o. dub. 6.

Cafe 10.

would be no warre, no trafique; but only that he should not causelesly hazard himselfe; nor with a resolution of wilfull mis-carriage.

To those instances he gives of a souldier that must keep his station, though it cost

him life; of a prisoner that may forbeare to flee out of prison, though the doors be open: of a man condemn'd to dye by hunger, in whose power it is to refuse a sustenance offered; of a man that latches the weapon in his own body to save his Prince; or of a friend, who when but one loase is left to preserve

the life of two refraines from his part and dyes first, or that suffers another to take that

planke in a shipwrack which him-

Dec. 2,

himselfe might have preposfessed, as trusting to the oares of his armes; or that puts himselfe into an infected house out of mere charity to tend the fick, though hee know the contagion deadly; or in a fea-fight blowes up the deck with gunpowder, not without his owne danger; or when the house is on fire casts himselfe out at the window with an extreame. hazard: To thefe, I fay, may be added many more; as the cutting off a limme to stop the courfe of a Gangrene; to make an adventure of a dangerous incision in the body, to draw forth the stone in the bladder, the taking of a large dose of opiate pills, to case a mortall extremity; or

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eu Javaola L. Verulam. Advancement of learning.

or lastly, when a man is already seised on by death, the receiving of some such powerful medicine, as may facilitate his passage (the defect of which care and art, the eminently-learned Lord Verulam justly complaines of in Physicians:) In these, and the like cases, a man may lawfully doe those things which may tend, in the event, to his owne death, though without an intention of procuring it.

And unto this head must be referred those infinite examples of deadly sufferings for good causes, willingly embraced for conscience sake. The seven Brethren in the Maccabees, (alluded to by S. Paul to his Hebrens) will

Heb,fr.35.

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and must rather indure the butchering of their owne slesh, then the eating of swines-slesh, in a willing affront of their law; Daniel will rather die then not pray. Shadrach, Meshach, and Abednego will rather fall downe bound into the fiery furnace sevenfold heated, then fall downe before the golden image.

And every right-disposed: Christian will rather welcome death then yeeld to a willing act of Idolatry, rebellion, witchcraft: If hereupon death follow by the infliction of others, they are sinfull agents, he is an innocent suf-

ferer.

As for that scruple among our Casuists, whether a man con-

Cafe 10.

condemned to dye by poyfon, may take the deadly draught that is brought him; it is fuch, as wife Socrates never made of old, when the Athenians tendred him his hemlocke; and indeed it may as well be disputed, whether a man condemned to dye by the axe, may quietly lay downe his head upon the block; and not, but upon force, yeeld to that fatall stroke. A juster scruple is, whether a man condemned to a certaine and painfull death, which he cannot possibly eschew, may make choice rather of a more easie passage out of the world; wherein I marvell at the indulgence of fome Doctors that would either excuse, or mince the matter.

Dec. 2.

matter. For although I cannot blame that naturall difposition in any creature, to shrinke from paine, and to affect (what it may) the shifting from extremity of miserie: yet for a Christian so to doe it, as to draw a greater mischiefe to himselfe, and an apparent danger to his foule, it cannot justly beare any other then a hard construction. For thus to carve himselfe of justice, is manifestly to violate lawfull authority; and whiles he would avoid a short paine, to incurre the shame and fin of a self executioner.

But if in that way, wherein the doome of death is passed, a man can give himselfe ease, or speed of disso-

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lution (as when a Martyr being adjudged to the fire, uses the help of a bagge of Gun-powder, to expedite his passage) it cannot bee any way judged unlawfull: The sentence is obeyed, the execution is accordingly done; and, if the patient have found a shorter way to that end which is appointed him, what offence can this be either to the law, or to the Judge?

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RESOLUTIONS.

The third Decade.

Cases of Piety and Religion.

CAS B I.

Whether upon the appearance of Evill Spirits we may hold discourse with them; and how we may demeane our selves concerning them.



Hat there are evill spirits, is no lesse certaine then that there are men: None

but a Sadduce, or an Atheist can

can make question of it.

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That evill spirits have given certaine proofes of their presence with men, both in visible apparitions, and in the possessions of places, and bodies, is no lesse manifest, then that we have soules, whereby they are discerned.

Their appearances are not wont to be without grievous inconveniences; whether in respect of their dreadfulnes; or their dangerous infinuations.

It is the great mercy of the God of spirits, that hee hath bound up the evill Angels in the chaines of darkenesse, restraining them from those frequent, and horrible appearances which they would Case I.

Dec.3.

would otherwise make to the terrour, and consternation of his weake creatures.

Whensoever it pleaseth the Almighty, for his owne holy purposes, so farre to loosen, or lengthen the chains of wicked spirits, as to suffer them to exhibit themselves in some assumed shapes unto men, it cannot but mainly import us to know, what our deportment should be concerning them. Doubtlesse to hold any faire termes of commerce, or peace (much more of amitie or familiarity) with them, were no better then to professe our selves enemies to God; for such an irreconcileable hostility there is betwixt the holy God, and these malignant spirits, that there

there can be no place for a neutrality in our relation to them: so as he is an absolute enemy to the one, that bidsnot open defiance to the other.

As therefore we are wont by our filence to fignifie our heart-burning against any person (in that we abide not to speake unto those whom we hate,) so must we carry our felves towards evill spirits: And if they beginne with us as that Devill did in the Serpent with Eve; how unfafe & deadly it may be to hold chat with them, appears in that first example of their onset; the issue whereof brought mifery, and mortality upon all mankinde; yet then, were our first parents in their innocency, and al earthCase I.

Dec.3.

ly perfection: wee now so tainted with sin, that Satan hath a kinde of party in us, even before his actuall temptations.

As therefore we are wont to fay that the fort that yeelds to parle is halfe won; so may it prove with us, if we shall give way to hold discourse with wicked spirits; who are farre too crafty for us to deale withall: having so evident an advantage of us, both in nature (we being) flesh and blood, they spirituall wickednesses) and in duration, and experience, we being but of yesterday, they coetaneous with the world and time it selfe.

If you tel me that our Saviour himself interchaged some speeches O

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fpeeches with the spirits whom he ejected; it is easily answered, that this act of his was never intended for our imitation; sith his omnipotence was no way obnoxious to their malice, our weaknesse is.

cannot therefore but marvell at the boldnesse of those men who professing no small degree of holines, have dared to hold familiar talke with evill spirits, and could be content to make use of them for intelligence; as the famous Jesuite, in our time, Pere Cotton; who having provided 50. questions to bee propounded to a Demoniack (fome concerning matters of learning, some other matters of State, concerning the then 1 6 3 1 French -

Dec. 3.

French King and the King of England) & having the writtendown under his own hand to that purpose, being questioned concerning ir, answered, that he had licence from Rome to tender those demands: as I received it upon certaine relation from the learned D. Tilenus with many pregnant and undeniable circumstances, which I need not here expresse. Although this need not feeme strange to me, when I finde that Navarre determines plainly, that when evill spirits are present (not by our invocation) as in possessed bodies, it is lawfull to move questions to them, (so it be without our prayers to them, or pact them) for the profit of others;

Navarr. Enchir. cap. 11. n. 28. thers; yea thus to conferre with them, even out of vanity, or curiofity, is but veniall at the most: Thus he: with whom Lessius goes fo far as to fay ; Licitum est petere verbo à Diabolo ut nocere desinat &c. It is lawfull to move the Devill in words to cease from hurting, so that it be not done by way of deprecation, or ina friendly compliance, but by way of indignation: A distinction which I confess past the capacity of my apprehension; who have not the wit to conceive how a man can move without implying a kinde of fuite; and how any fuite can confift with an indignation.

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Leff, 1. 2. De magia cap. 44. dub. 6.

Dec . 3.

Church of Rome professeth to teach and practife, the ejection of evill spirits by an imperious way of command; having committed to her Exorcifts a power of Adjuration, to which the worst of Devills must be subject; a power more eafily arrogated then really exercised: Indeed this over-ruling authority was eminently conspicuous, not onely in the selected twelve, and the seventy disciples of Christ, who returned from their Embassie with joy, that the Devils were subject to them through his name, but even in their holy succesfors of the Primitive Church, whiles the miraculous gifts of the holy Ghost were sensibly powred out upon men; but

Luk. 10, 17.

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but if they will be still challenging the fame power; why do they not as well lay claime to the speaking of strange tongues ? to the super-naturall cure of all difcases to the treading on ferpents and scorpions ? to the drinking of poylons without an Antidote? and if they must needs acknowledge these faculties above their reach, why doe they presume to divide the Spirit from it selfe; arrogating to themselves the power of the greatest workes, whiles they are professedly defective in the least? wherein surely, as they are the true successors of the sonnes of Sceva, who would be adjuring of Devils

L 3

Cafe I.

Mar. 16.17.

Act.19.13, 14.15 16.

by the name of Jesus, whom Paul Dec.3.

Thefau-TUS Exerci/morum; atque Coniurationum terribilium er. Iratt. Difper fo demonum. Frairis Va-Lerii Polydori Patavini. Ord. Minerum Conventualium.

Paul preached, so they can looke for no other intertainment then they found from those Demoniacks, which was to be baffled, and beaten, and wounded.

Especially, if we consider the foule superstition, and groffe magick which they make use of in their Conjurations; by their own vainlydevised Exorcismes, feoffing a supernaturall vertue upon drugges, and herbes, for the dispelling, and staving off all evill fpirrits; Because the bookes are not perhaps obvious, take but a taste in one, or two: * In the treasure of Exercismes, there is this following Benediction of Rue, to be put into an hallowed paper, and to be carried about

can bout you and smelled at for the repelling of the Invafion inom of Devills. I conjure thee ô ich thou creature of Rue, by the holy Lord, the Father, the en.

Cafe I.

almighty and eternall God, which bringeth forth graffe in the mountaines, and herbes for the use of man: And which by the Apostle of thy Sonne our Lord Jesus Christ, hast taught, that the weake should eate herbes: I conjure thee that thou bee bleffed, and sanctified to retaine this invisible power

Tir.Applicabile. 3. Rutain charta benedicta super je portanda & olfacienda, ad omnem invasionem diabolicam. repelledam.

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and vertue, that whofoever shall carry thee about him, or

shall smell to thee, may be free from all the uncleannesse of Diabolicall infatua-

tion; and that all Devils, and

all witchcrafts may speedily fall Dec.3.

fall from him, as herbes or grasse of the earth: through the same our Lord Jesus Christ, which shall come to judge the quick and the dead, and the world by fire. The like is prescribed to be done to the seeds of Hyperison or S. Johns wort.

Applicabile. 15.
Tit.
Profumigatio borribilis,
ejúsque
vulgata
benedictio.

Adde to this, the horrible furnigation to this purpose as it followes. I conjure thee ô thou creature of Galbanum, Sulphur, Asa fatida, Aristolochium, hypericon and Rue, by the H living God; by the H true God &c. by Jesus Christ &c. that thou be for our defence; and that thou be made a perpetuall sumigation, exorcised, H blessed, and consecrated to the safety of us, and of all faithfull Christians;

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Christians, and that thou be a perpetuall punishment to all malignant spirits, and a most vehement, and infinite fire unto them, more then the fire and brimstone of hell is to the infernall spirits there &c. &c.

But what doe I trouble you with these dreadfull incantations, whereof their allowed bookes of Conjuration are full? To these I may adde their application of holy water, (wherein they place not alittle confidence) which (faith Lessius) receives the force from the prayers of the by the meanes Church, whereof it comes to passe, that it is affisted with divine power; which (as it were) refts upon it; and joynes

Leffubi fupra Dubit 525

with

Dec. 3.

with it, to the averting of all the infestations of the Devill: But faine would I learn where the Church hath any warrant from God to make any fuch fuit; where any overture of promise to have it granted? what is their prayer without faith? and what is their faith, without a word? But I leave these men (together with their Crosses, and Ceremonies and holy reliques, wherein they put great trust in these cases) to their better informed thoughts. God open their eyes that they may see their errors.

For us, what our demeanure should be in ease of the appearance, or molestation of evill spirits, we cannot desire of

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a better pattern then S. Paul; his example is our all-fusficient instruction; who when the messenger of Satan was sent to buster him, fell presently to his prayers; and instantly besought God thrice, that it might depart from him. Lo he that could command evill spirits out of the

Cafe T.

2 Cor. 12.

Verlig!

Jan. 4:7

was sufficient for him: To them must we still have our

bodily possession of others;

when it comes to his owne

turne to be buffeted by them,

betakes himself to his prayers to that God whose grace

Devill he shall see from us: In the primitive times, those

that could command, needed not to fue: Se therfore fasting

and prayer was an higher (as

Dec. 3.

a more laborious) work (to this purpose) in the disciples, then their imperative course of ejection; but for us, we that have no power to bid, must pray; Pray; not to those ill guests that they would depart; not to the blessed Virgin, or our Angel Keeper that they would gard us from them, but to the great God of heaven, who commands them to their chaines: This is a fure and everlasting remedy, this is the onely certaine way to their foile, and our deliverance, and victory.

CASE

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Cafe 2.

CASE II.

How farre a secret patt with evill spirits doth extend, and what actions and events must be referred thereunto.

IT is a question of exceeding great use, and necessity; for certainly many thousands of honest, and well minded Christians are in this kinde drawne into the snares of Sa tan, unwarily, and unwittingly: For the determining of it, these two grounds must be laid: First, that there is a double compact with Satan; One direct and open; wherein Magicians and witches, upon wofull conditions, and direfull ceremonies, enter in-

Dec. 3.

to a mutuall covenant with evill spirits: The other, secret and indirect; wherein nothing is seen, or heard, or knowne to be agreed upon; onely by a close implication, that is suggested and yeelded to be done, which is invisibly seconded by diabolicall operation.

The second ground is; that whatsoever hath not a cause in nature according to Gods ordinary way, must be wrought either by good, or evill spirits: That it cannot be supposed that good Angels should be at the command of ignorant, or vicious persons, of either sexe, to concurre with the in superstitious acts, done by meanes altogether in themselves inessectuall.

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Cafs 2.

all, and unwarrantable: and therefore that the Devil hath an unseene hand in these effects, which he marvailoufly brings about, for the winning of credit with the world, and for the obliging and engaging of his owne clients: of this kinde there is too-lamentably-much variety in common experience: Take an handfull, if you please, out of a full sack : let the first be, that authentique charme of the Gospell of S. John allowed in the parts of the Romish correspondence; wherein the first verfes of that divine Gospell are fingled out, printed, in a small roundell, and fold to the credulous ignorants, with this fond warrant, that whofoever Dec.3.

ever carries it about him shall be free from the dangers of the dayes mif-happes: The book and the key; the five and the sheetes, for the difcovery of the theefe; The noching of a flick with the number of the warts which we would have removed; the rubbing of them with raw flesh, to be buried in a dunghill that they may rot away insensibly therewith, or washing the part in moonthine for that purpose: words, and characters, of no fignification, or ordinary forme, for the curing of diseases in man, or beast, more then too many whereof we finde in Cornelius Agrippa, and Paracelfus.

Formes of words and figures

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figures for the stanching of blood; for the pulling out of thornes, for easing paine, for remedying the biting of a mad dog.

Amulets made up of reliques, with certaine letters and crosses, to make him that weares them, invulnerable.

Whistling for a winde wherewith to winnow; as it is done in some ignorant parts of the west.

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The use of an holed flint, hangd up on the rack, or beds head, for the prevention of the night-mare in man, or beast.

The judging by the letters of the names of men or women, of their fortunes, as they call them; according to the serious fopperies of Arcandam. The 234

Dec. 3.

The feventh fonnes laying on of hands for the healing of diseases; The putting of a verse, out of the Pfalmes, into the vessell, to keep the wine from fowring; Therepeating of a verse out of Virgil to preserve a man from drunkennesse all that day following; Images aftronomically framed under certaine constellations to preserve from severall inconveniences; as under the figne of the Lion the figure of a Lion made in gold, against melancholik fancies, dropsie, plague, fevers: which Lessius might well marvell how Cajetan could offer to defend; when all the world knowes how little proportion and correspondence there is betwixt those

Case 2.

those imaginary signes in heaven, and these reall creatures on earth.

Judiciary Astrology, as it is commonly practifed, whether for the cafting of nativities, or prediction of voluntary, or civill events, or the discovery of things stollen or lost: for, as the naturall Astrology when it keepes it selfe within its due bounds is lawfull, and commendable, (although not without much uncertainty of issue;) fo that other Calculatory, or figure-casting Astrology is prefumptuous and unwarrantable; cryed ever down by Councells and Fathers, as unlawfull; as that which lies in the mid-way betwixt magick, and impofture Dec.3.

sture, and partakes not a little of both.

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The anointing of the weapon for the healing of the wound, though many miles distant; wherein (how confident so ever some intelligent men have been doubtleffe there can be nothing of nature; fith in all naturall agencies, there must necessarily be a contaction either reall, or virtuall, here in such an intervall, none can be: neither can the efficacy be ascribed to the salve; since fome others have undertaken and done the cure, by a more homely and familiar ointment; It is the ill-bestowed faith of the agent that drawes on the successe from the hand of an invisible phyfitian. Calming

Calming of tempelts, and | Cafe 2. driving away devills by ringing of belles, hallowed for that purpose.

Remedy of witcheries, by heating of Irons, or applying of croffes. I could cloy you with instances of this kinde; wherewith Satan beguiles the fimple upon these two mif-grounded principles; 1. That in all experience they have found fuch effects following upon the use and practise of such meanes; which indeed cannot be denied : Charmes and spells commonly are no lesse: unfailing in their working, then the best naturall remedies, doubtlesse, the Devill is a most skilfull Arrist: and can doe feates beyond all mortall

Dec.3.

2 King.i.3.

mortall powers; but God blesse us from imploying him: Is it not because there is not a God in Israel that we goe to enquire of Baalzebub the God of Ekron? m

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2. That there may be hidden causes in nature for the producing of such effects which they know not; neither can give any reason of their operations; whereof yet we doe commonly make use, without any scruple; and why may not there be ranged under the fame head : which they have used with no other but good meaning; without the leastintention of reference to any malignant powers; In answer whereto, I must tell them, that their best plea is ignorance; which may

Cafe 2.

may abate the fin, but not excuse it: There are indeed, deep secrets in nature, whose bottome we cannot dive into: asthole wonders of the loadstone; a peece outwardly contemptible, yet of such force as approacheth neare to a miracle; and many other strange sympathies and antipathics in severall creatures; in which ranke may be fet the bleeding of the dead at the presence of the murtherer: and some acts done for the discovery of witchcraft both in this, and our neighbour kingdome; But withall, though there be fecrets in nature which wee know not how she workes; yet we know there are works which are well knowne, that fhe

Dec.3.

she cannot do: how far her power can extend is not hard to determine: and those effects which are beyond this, (as in the fore-mentioned particulars) we know whither to ascribe: Let it be therefore the care and wifedome of Christians to looke upon what grounds they go: whiles they have God, and nature for their warrant, they may walke fafely; but where these leave them, the way leads downe to the chambers of death. mali both in this."

ne althour kingdomes. But withall, though three no feciets in nature which wee

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Cafe 3.

CASE III.

Whether referving my conscience to my selfe I may be present at an Idolatrous devotion; or whether in the lawfull service of God I may communicate with wicked persons.

He question is doubles both of them of great importance; The former I must answer negatively; your presence is unlawfull upon a double ground; of fin, and of scandall, of fin, if you partake in the Idolatry; of scandall, if you doe but feeme to partake : The fcandall is threefold; you confirme the offenders in their fin, you draw others by your

example M

Dec. 3.

Cor.8.4. 5. 6, 7, 8, 9, 10.

example into fin, you grieve the spirits of those wifer Christians, that are the sad witnesses of your offence. The great Apostle of the Gentiles hath fully determined the question in a more favourable case: The heathen facrifices were wont to be accompanied (in imitation of the Jewish, prescribed by God himselfe) with feasts; the owners of the feast civilly invite the neighbours (though Christians) to their banquets; The Tables are spread in their Temples, The Christian guests out of a neighbourly fociety, go, fit, eate, with them: S. Paul cries downe the practife, as utterly unlawfull: yet this was but in matter of meat; which

which fure was Gods, though | Cafe 3. facrificed to an Idoll; how much more must it hold in rites and devices, meerly, either humane, or devilish?

Inced not tell you of the Christian souldiers in the primitive persecution, who when they found themselves by an ignorant mistaking drawne, under a pretence of loialty, into fo much ceremony as might carry fome semblance of an Idolatrous thurification, ran about the city in an holy remorfe, and proclaimed themselves to be Christians: Nor how little it excused Marcellinus Bishop of Rome, from an heavy cenfure, that he could fay, he did but for company cast a few graines of incente into the M 2 fire.

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Dec. 3.
1 Thef. 5.

fire. The charge of the Apostle is full, and peremptory, that we should abstaine from every appearance of evill.

It is a poore plea that you mention of the example of Naaman Alas, an ignorant pagan: whose body if it were washed from his leprosie, yet his soule must needs be still foule: yet even this man will thenceforth offer neither burnt offering, nor facrifice unto any other God, but unto the Lord; nor upon any ground but the Lords peculiar; and will therefore lade two Mules with Israelitish earth, and is now a professed convert: Yea, but he will still bow in the Temple of Rimmom: But how will hee bow?

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2 Kings 5.

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bow? Civilly onely, not religiously; In the house of R mmen, not to the Idol; Not in relation to that false deity, but to the King his master: you shall not take him going alone under that Idolatrons roofe, but according to his office, in attendance of his Soveraine: nor bowing there, but to fupport the arme that lean'd upon him: And if upon his returne home from his journey he made that solemne protestation to his Syrians, which he before made to the Prophet: Take notice ô all yee Courtiers, and men of Damascus, that Naaman is now become a proselyte of Ifrael; that he will serve and adore none but the true God; and if you see him M 2

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Dec.3.

him at any time kneeling in the temple of your Idol Rimmon, know that it is not done in any devotion to that false God; but in the performance of his duty and service to his royall master; I see not but the prophet might well bid him, Goe in Peace. How ever, that ordinary and formall valediction to a Syrian, can be no warrant for a Christians willing dissimulation.

It is fit for every honest man to seeme as he is; what do you howling amongst Wolves, if you be not one? Or what do you amongst the Cranes, if you be a Storke? It was the charge of Febu, when he pretended that great sacrifice to Baal, Search, and looke

looke that there be here with you none of the servants of the Lord, but the worshippers of Baal onely: furely had any of Gods clients fecretly shrouded himselfe amongst those Idolaters, his blood had been upon his own head: Briefly then, if you have a minde to keep your felfe in a fafe condition for your foule, let me lay upon you the charge which Moses enforced upon the congregation of Ifrael in the case of Corahs insurrection, Depart I pray you from the tents of these wicked men, and touch nothing of theirs, lest yee be consumed in all their finnes.

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The latter I must answer affirmatively: If the ordinances beholy, why should M 4 not

Case 3.
2 King. 10.
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Num.16.

Dec.3.

not you take your part of them?

It is an unjust nicenesse to abridge your selfe of a blesfing, for another mans unworthinesse: Doubtlesse, there ought to be a separation of the precious from the vile; the neglect whereof is the great fin of those, whom in duty it concerns to performe it; but where this is not accordingly done, shall I suffer for anothers offence? my owne finnes may justly keepe me off from Gods Table; if wiother mans may do fo too, I appropriate the guilt of his fin to my owne wrong ; furely it argues but small appetite to these heavenly viandes, if you can be put off with a pretence of others faultes: Judge of

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Cafe 3i

of the spirituall repast by this earthly, were you throughly hungry, would you refraine from your meat because one of the guests hath a paire of foule hands ? that may be a just eye-sore to you, but no reason why you should forbeare wholesome dishes: Carve you for your felfe, and looke to your owne trencher; he feeds for himselfe, not for you; fin is the uncleannesse of the fonle; that cleaves closer to it, then any outward nastinesse can to the skin; to feed thus foul then is doubtleffe unwholfome to himfelf, It can be no hurt to you. But you are ready to straine the comparison higher to your owne advantage : fay, that one of the guests hath a M 5 plagueDec. 3.

plague-fore running upon him, shall I then thinke it safe to fit at the Table with him? now fin isof a pestilent nature fpreading its infection to others besides its owne subject; therefore it is meet we keep aloofe from the danger of his contagion: True, there are sinnes of a contagious nature, apt to diffuse their venome to others, (as there are othersome whose evill is intrinfecall to the owner) but these infect by way of evill counfails, or examples, or familiar conversation, not by way of a meere extemporary presence of the person: by spreading of their corruption to those that are taken with them; not by scattering abroad any guilt to those that ab-

abhorre them. Welldid our Saviour know how deadly an infection had feifed on the soule of Judas, yet he drives him not from his board, left

his sinne should taint the disciples.

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The Spirit that writes to the seven Asian Churches faw and professed to see the horrible infection spread amongst the I byatirians by the doctrine and wicked practifes of their Jefebel, yet alt that he injoynes the godly. party is to hold their owne.

Have no fellow/hip, faith Ephe sar. the Apostle, with the unfruitfull workes of darknesse: Loc he would not have us partakein evill: he dorn not forbid us to partake with an evill man in good workes...

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Dec. 3.

However therefore we are to wish and indevour (in our places) that all the congregation may be holy; and it is a comfortable thing to joine with those, that are truly conscionable, and carefully observant of their wayes, in the immediate services of our God : yet where there is neglect in the over-feers, and boldnesse in the intruders, and thereupon, Gods facred Table is peftred with some unworthy guests; it is not for you, upon this ground, to deprive your selfe of the benefit of Gods bleffed Ordinances; notwithstanding all this unpleasing encombrance you are welcome, and may be happy.

CASE

Case 4.

CASE IV.

Whether Vowes be not out of feason now under the Gospell; of what things they may be made; how farre they oblige us; and whether, and how farre they may bee capable of a release.

that is cast upon us by the Roman Doctors, that we abandon all vowes under the Gospell: They well see that we allow and professe that common vow (as Lessius termes it) in Baptisme; which yet both Bellarmine, & he, with other of their conforts, deny to be properly such: It is true, that as infants make it by their proxies, there

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Dec. 3.

there may seeme some impropriety of the ingagement as to their persons; but if the par ty Christened be of mature age, the expresse vow is made absolutely by, and for himselfe. Besides this we allow of the renovation of all those holy vowes, (relating to the first) which may binde us to a more strict obedience to our God; yet more, though we doe not now allow the vowes of things in their nature indifferent, to be parts of Gods worship, (as they were formerly under the law) yet wedoe willingly approve of them, as good helpes and furtherances to us, for the avoiding of fuch francs as we are obnoxious unto; and for the better forwarding of our holy obedience. Thus

Thus, the charge is of eternall use, Vow unto God and performe it : Not that we are bound to vow; that act is free and voluntary: but that when we have vowed, we are straightly bound to performance: It is with us for our vowes as it was with Ananias and Saphira for their substance, Whiles it remained (faith S. Peter) was it not thine owne? He needed not to fell it, hee needed not to giveit; but if he will give, he may not referve: If he professe to give all, it is death to fave some; he lives to the holy. Ghoft, that defalkes from that which he engaged himselfe to bestow.

It mainly concernes us therefore to looke carefully Cafe 4. Pla.76.11.

AR. 5. 4.

Dec.3.

in the first place, to what we yow; and to our intentions in vowing; and to see that our vow be not rash and unadvised; of things either triviall, or unlawfull, or imposfible, or out of our power to performe; for every vow is a promise made to God; and to promise unto that great and holy God, that which either we cannot, or ought not to doe, what is it other then to mock and abuse that Sacred Majesty; which will not hold him guiltlesse that taketh his name in vaine? It is the charge to this purpose of wife Solomon; Be not raft with the mouth; and let not thine hears be hasty to utter any thing before God for God is in heaven, and thou upon earth, therefore

Eccles.5.2.

therefore let thy words be fere.

Your vow therefore must be either of things morally good; for the quickening you in that duty which you are bound to do: or of things indifferent in themselves, the refraining, or doing whereof may tend either to the restraint from sin, or the furtherance of your holy obedience: As a man that findes his braines weake, and his inclination too strong to pleafing liquor, bindes himfelfe by a vow to drinke no wine fave onely at Gods table : or a man that findes himselfe apt to be mis-carried by his appetite, confines himself by his vow to one dish, or to one meale for the day : or a man that findes himselfe given to the Case 4.

Dec. 3.

the pleasure of gaming, to the losse of his time, and the weakning of his estate, curbes himselfe by his vow never to play for money: or a man that findes his prayers weake, and his slesh rebellious, vowes to tame his unruly desires, and to stir up his duller devotions, by fasting.

And as the matter of your vow must be carefully regarded; so also your intentions in vowing; for if you vow to do good to an ill end, your thanke is lost, and danger of judgement incurred: as if you vow to give almes for vainglory, or ostentation: or, if God shall prosper your usurious, or monopolizing project, you will build an hospitall; your vow is

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Case 4.

Bromiard. fum. præ-dict.

like to be so accepted, as the story tells us, the prayers were, of that bold Curtizan, who comming to the shrine of S. Thomas of Canterbury (as that traitour was stiled) devoutly begd, that through the intercession of that Saint, the might be graced with fo winning a beauty, that might allure her paramours, to a gainfull courting of so pleafing a mistresse; when suddainly (as my author tells me) she was stricken blinde: and certainly, so it might well be; for if a supposed Saint were invoked, it was God that was highly provoked by the finfull petition of a shamelesse harlot: and it was most just for him to revenge it; and so we may well expect

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Dec.3.

it shall be with whosoever shall dare to make use of his facred name to their owne wicked, or unwarrantable

purpofes.

Since therefore our vowes must be for their matter (as Caluists well determine) De meliore bono, and for intentions, holy and directed onely to good; it plainly appeares that many idle purposes, promiles, resolutions are wont to passe with men for vowes, which have no just claime to that holy title: One faies he vowes never to be friends with fuch a one that hath highly abused him; another, that he will never come under the roofe of fuch an unkinde neighbour : one that he will drinke fo many healths

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Cafe 4.

to his honoured friend; another that he will not give the wall or the way to any pafsenger: one that he will never weare suit but of such a colour, another that he will never cut his haire till such an event; These, and such like may be foolish, unjust, ridiculous self-ingagements; but vowes they are not; neither therefore do binde the conscience otherwise then as Sampsons cords, and withes, which he may breake as a thred of towe.

But as for true vowes; certainly they are so binding, that you shall sin hainously in not performing them: It is no better then dishonesty to faile in what we have promised to men; but to disappoint

Judg. 16.

But if it shall so fall out, that there proves to be some maine inconvenience, or im-

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Num. 30.

possibility in the fulfilling of this your solemn promise unto God, whether through the extreme prejudice of your health, and life, or the overswaying difficulty of the times what is to be done; furely as under the law it was left in the power of the parent to over-rule the vow of the childe, so I doubt not but under the Gospell, it is left in the power of your spirituall fathers, to order, or dispense with the performance of those vowes, which you would, but cannot well fulfill: neither was it spoken in vaine, nor in matter of fins enely, which our Saviour in way of authorization, faid to his Apostles and their fuccessours, What soever yee shall binde

Dec.3. Matth. 18

binde on earth, shall be bound in heaven, and what soever yee shall loofe on earth shall bee loofed in heaven. In this case therefore, I should advise you to make your addresse to your spirituall pastor, and freely to lay open your condition before him, and humbly to submit your selfe to his fatherly directions in that course which shall be found best and safest for your soule: Thinke it not safe in a businesse of so high nature to relye upon your owne judgement, and to carve out your owne fatisfaction; but regard carefully what God hath faid of old, The priests lippes should keep knowledge and they should seeke the law at his mouth : for he is the messenger of the Lord of hofts. CASE

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CASE V.

Whom may we justly hold an Heretick; and what is to be done in the case of Heresie!

Here is no one point wherein the Church of God hath fuffered more then in the mif-understanding of this question; How many thousand innocents have in these later ages of the Church perished in this unhappy quarrell? yea how many famous Churches have been most unjustly thunderstruck with direfull censures of Excommunication, down to the pit of hell, upon pretence of this crime, which have been leffe guilty then their

Dec.3.

their Anathematizers? And even amongst our selves, how apt we are to brand one another with this hatefull marke where there is no true merit of such a reproach?

It much imports us therefore to know who may be deservedly thus stigmatized by us: I have elsewhere somewhat largely infifted on this theme, whither I might spare fome lines to referre you; But, in short, thus: To let passe the original sense, and diversacceptions of the word; An herefie is no other then an obstinate errour against the foundation; All truthes are precious, but some withall necessary; All errours are faulty, but some damnable; the haynousnesse of the error

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is according to the worth of Case 5. the truth impugned; There are Theologicall verities fit for us to know and beleeve; there are Articles of Christian faith needfull to be known and beleeved; There are truthes of meet and decent superstructure, without which the fabrick may stand; there are truthes of the foundation so essentiall, as that without them it cannot stand: It is a maime to the house if but a tile be pull'd off from the roofe, but if the foundation be razed, the building is overthrown: this is the endevour and act of herefie.

But now the next question will be what doctrines they are which must be accounted to be of the Foun-N₂ dation;

Dec. 3.

Relat, of the third confer.p.6.

dation; Our countreyman Pifter the Jesuite, and his Affociates wiltel you roundly, that all those things which are defined by the Church to be beleeved, are fundamental: A large groundworke of faith: Doubtleffe the Church hath defined all things contained in the fcripture, to be beleeved; and theirs (which they call Catholick) hath defined all those Traditionall points which they have added to the Creed, upon the same necessity of falvation to be beleeved; now if all these be the foundation, which is the building : what an imperfect fabrick do they make of Christian Religion; all foundation, no walls, no roofe Surely,

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Case 5.

Surely, it cannot, without too much abfurdity, be denied, that there is great difforence of Truthes, some more important then others, which could not be, if all were alike fundamentall: If there were not some speciall Truthes, the beleefe whereof makes, and distinguisheth a Christian, the authors of the Creed Apostolick (besides the other Symboles received anciently by the Church) were much deceived in their aime : He therefore that beleeves the holy Scriptures (which must be a principle presupposed) to be inspired by God; and as an abstract of the chiefe particulars thereof, professeth to beleeve and embrace the Articles of the N 3

Dec.3.

the Christian faith, to regulate his life by the law of Gods commandements, and his devotion by the rule of Christ prescribed; and lastly to acknowledge and receive the Sacraments expresly in stituted by Christ; doubt leffe this man is by profession a Christian, and cannot be denyed to hold the foundation; and whofoever shall wilfully impugue any of thefe, comes within the verge of Herefie : wilfully, I fay; for meere error makes not an heretick; if out of simplicity, or groffe ignorance, a man shall take upon him to maintaine a contradiction to a point of faith, being ready to relent upon better light, he may not be thus branded: eviction

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Case 5.

eviction and contumacy must improve his error to be hereticall. The Church of Rome therefore hath been too cruelly-liberall of her centures this way; having bestow'd this livery upon many thoufand Christians whom God hath owned for his Saints: and upon fome Churches more Orthodoxe then her felfe; prefuming upon a power (which was never granted her from heaven.) to state new articles of faith; and to excommunicate and barre all that shall dare to gainfay her oracles: Whereas the great Doctor of the Gentiles hath told us from the spirit of God, that there is but one Lord, one faith, one baptisme; and what faith is N4 that

Ephel. 4.5.

Dec 3. Jude 3.

that : S. Jude tells us: The faith that was once delivered to the Saints; fo that as well may they make more reiterations of Baptisme, and multiplicities of Lords, as more faiths then one: some explications there may be of that one faith, made by the Church, upon occasion of new-fprung errors, but fuch, as must have their grounds from fore-written truths; and fuch, as may not extend to the condemnation of them whom God hath left free: new articles of faith they may not be: nor bind further then God hath reach't them.

Hereticks then they are, and onely they, that pertinaciously raze the foundation what now must be done

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with them? furely, first, if they cannot be reclaimed, they must be avoided: It is the charge of the beloved disciple to the elect Lady;

2 Iohn v.io

bring not (that is, by an ordinary Hebraisme, opposes) this

your houses, neuther bid him God speed; But the Apostle

of the Gentiles goes yet higher; for writing to Times

the great Super-intendent of Grete, his charge is, A man

that is an herevick, after the first and second admonision reject.

Now, when we compare the charge with the person, we cannot but finde that this N 5 rejection Tit.3.100.

Dec. 3.

rejection, is not a meere negative act, of refraining company; but a positive act of censure, so as he who had power to admonish, had also power to reject in an authoritative, or judicatory way : He faies then, Devita, reject or avoid, not (as Erasmus too truly, but bitterly scoffes the Romish practise) De vita telle: This of killing the heretick, as it was out of the power of a spirituall supervisor, so was it no lesse farre from the thoughts of him that defired to come in the spirit of mecknesse: Fagots were never ordained by the Apostle for arguments to confute hereticks; this bloudy Logick and Divinity was of a much later brood; and is for

for a Dominick, not a Paul to Cale 5. owne : for certainly faith is: of the fame nature with love, it cannot be compelled; perswasions may move it, not force: These intellectuall finnes must look for remedies of their owne kind; But if either they be (as it is often) accompanied with damnable blasphemies, against God, whether in his effence, or astributes, or the three incomprehensible persons in the all-glorious Deity, or the bleffed mediator betwixt God and man Jesus Christ; in either of his natures; Or else, shall be attended with the publique disturbances and dangerous distempers of the Kingdom, or State wherein they are broached, the Apostles

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Divers practicall Cafes 276 postles wish is but seasonable, Dec. 3. in both a spirituall and a bodily fense; Would to God those Gal. 5. 12. were cut off that trouble you: In the meane time, for what concernes your selfe, if you know any fuch, as you love God, and your foules, keep aloofe from them, as from the pestilence. Epiphanius Epiphan. haref.l. I. well compares herefie to the biting of a mad dog, which as it is deadly, (if not speedily remedied) so is it withall dangeroufly infectious; not the tooth onely, but the very foame of that enveno-

med beast carries death in it; you cannot be safe, if you

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avoid it not.

ne Kingdom, gržente **a ča D**re bronched.

Cafe 6.

CASE VI.

Whether the laws of men doe binde the conscience; and how far we are tied to their obedience.

20th these extreames of opinion cocerning this point must needs bring much mischiefe upon Church & Kingdome: Those that absolutely hold fuch a power in humane laws make themselves slaves to men: Those that deny any binding power in them, run loose into all licentiousnesse: Know then that there is a vast difference betwixt these two; To binde the confcience in any act; and to binde aman in conscience to doe or omit an act: Humane abled lawes

Dec. 3.

lawes cannot doe the first of them; the latter they may, and must doe: To binde the conscience is to make it guilty of a fin in doing an act forbidden, or omitting an act injoyned as in it selfe such: or making that act in it felfe an acceptable service to God which is commanded by men: Thus humane lawes cannot binde the conscience: It is God onely, who as he is greater then the Conscience, to hath power to binde or loose it: It is he that is the onely Lawgiver to the Conscience: Princes & Churches may make lawes for the outward man; but they can no more binde the heart, then they can make it, In vaine is that power which is not inabled

1 Joh.3.21

Elay 31. 22. Jam. 4.12.

abled with coertion; now Cafe 6. what coertion can any humane power claime of the heart, which it can never attaine to know? the spirit of man therefore is subject onely to the father of spirits, who onely fees and fearches the secrets of it, and can both convince, and punish it.

Besides, well did penitent David know what he faid, when he cry'd out : Against thee onely have I sinned: he knew that fin is a transgression of the law, and that none but Gods law can make a fin: Men may be concerned, and injured in our actions, but it is God who hath forbidden these wrongs to men, that is finned against, in our acts of injustice and uncharitable-

Ffal. 51.

nesse:

Dec.3.

Gal.s.I.

neffe: and who onely can inflict the spirituall (which is the highest) revenge upon offenders. The charge of the great Doctor of the Gentiles to his Galatians, was, Stand fast in the liberty wherewith Christ bath made us free; and be not intangled againe in the yoaks of bondage. What yoake of bondage was this but the law of Ceremonies: what liberty wasthis but a freedome from the bondage of that law ? And certainly if those ordinances, which had God for their author, have so little power to binde the conscience, as that the yoake of their bondage must be shaken off, as incon-

fistent with Christian liberty; how much lesse is it to be in-

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Cafe 6.

dured, that we should be the fervants of men, in being tyed up to fin by their prefumptuous impositions ?

The lawes of men therefore doe not, ought not, cannot bind your conscience, as of themselves, but, if they be just, they binde you in conscience to obedience: They are the words of the Apostle to his Romans; Wherefore yee must needs bee Rom.13.5. Subject; not onely for wrath, but also for conscience sake. However then their particular constitutions in themselves put no speciall obligation uponus, under paine of fin, and damnation; yet in a general relation to that God, who hath commanded us to obey authority, their neglect

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Dec. 3.

or contempt involves us in a guilt of fin: All power is of God; that which the supreme authority therefore enjoynes you, God enjoynes you by it; the charge is mediately his; though passing through the hands of men.

How little is this regarded, in these loose times, by those lawlesse persons, whose practises acknowledg no soverainty but titular, no obedience but arbitrary; to whom the strongest lawes, are as weapons to the Leviathan, who esteemes Iron as straw, and brasse as rotten wood?

Iob 41.27.

Surely had they not first cast off their obediece to him that is higher the the highest, they could not without trembling heare that weighty charge

charge of the great God of heaven, Let every soule be subjest to the higher powers: For there is no power but of God; and the powers that be, are ordained of God: Submit your setves to every ordinance of man for the Lords sake; and therefore should be convinced in themselves, of that awe, and duty, which they owe to Soverainty, and know and resolve to obey God, in men; and men for God.

You fee then how requifite it is, that you walke in a middle way betwixt that excessive power which stattering Casuists have been wont to give to Popes, Emperours, Kings, and Princes in their severall jurisdictions; and a lawlesse neglect of lawfull Cafe 6.

Rom. 13.1.

1 Pet.1.13.

Dec. 3.

Tract.de Vit. spec. lect.4. Cit.Dom.à Soto ut infra.

Gersonis
positio parum distat
ab bæresi
Lutberana.
Dominic.à
Soto De
Iure &c.
l. 1. qu. 6.
Act. 24.14.

full authority: For the orthodoxe, wife, and just moderation whereof, these last ages are much indebted to the learned and judicious Chancelour of Paris, John Gerson, who first so checked that over flowing error of the power of humane usurpation (which carried the world before it) as gave a just hint to succeeding times, to draw that stream into the right channell; in fo much as Dominious à Soto complaines greatly of him, as, in this little differing from the Lutheran herefie : But in the way which they call heresie, we worship the God of our fathers; rendring unto. Cefar the things that are Cefars, and unto God those things that are Gods; yeelding our bodies

bodies to Cefar, reserving our soules for God: tendring to just lawes, our active obedience, to unjust, passive.

But in the mean time, far be it from us to draw this knot of our obligation harder, and closer then authority it selfe intends it: What ever Popes may do for their Decrees, certainly good Princes never meant to lay such weight upon all their lawes as to make every breach of the (even in relation to the authority given them by God) to be finfull.

Their lawes are commonly flut up with a fanction of the penalty imposed upon the violation: There is an obedientia bursalis, (as, I remember, Gerson calls it,) an obedience Dec . 3.

obedience, if not of the perfon, yet of the purse; which Princes are content to take up withall: we have a world of finnes (God knowes) upon us in our hourely transgressions of the royall lawes of our maker; but woe were us, if we should have so many finnes more, as we breake statutes: In penall lawes, where scandall or contempt finde no place, humane authority is wont to rest satisfied with the mulct paid, when the duty is not performed.

Not that we may wilfully incurre the breach of a good law, because our hands are upon our purse-strings ready to stake the forfeiture; This were utterly to frustrate the

Case 6.

end of good lawes, which doe therefore impose a mulct that they may not be broken; and were highly injurious to foverain authority, as if it fought for our money, not our obedience, and cared more for gaine, then good order; then which there cannot be a more base imputation cast upon government: As then we are wont to fay in relation of our actions to the lawes of God; that fome things are forbidden because they are finfull, and some things are finfull because they are forbidden, so it holds also in the lawes of men; some things are forbidden because they are justly offensive; and fome other things are onely therefore offensive because they Dec.3.

they are forbidden; in the former of these, we must yeeld our carefull obedience, out of respect even to the duty it selse; in the latter, out of respect to the will of the law-giver; yet so, as that if our owne important occasions shall enforce us to transgresse a penall law, without any affront of authority or scandall to others, our submission to the penalty frees us from a sinfull disobedience.

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CASE VII.

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Whether Tithes be a lawfull maintenance for Ministers under the Gospell; and whether men be bound to pay them accordingly.

A S the question of Mine and Thine hath ever embroyled the world; so this particular concerning Tithes hath raised no little dust in the Church of God: whiles fome plead them in the precise (quota parte) due and neceffary to be paid, both by the law of God, and of nature it self; others decry them as a Judaicall law, partly Ceremoniall, partly Judiciall; and therefore either now unlawfull, or at least neither obligatory

Dec.3.

obligatory, nor convenient.

What is fit to be determined in a businesse so overagitated; I shall shut up in these ten propositions.

I The maintenance of the legall ministery allowed and appointed by God was exceeding large and liberall.

Besides all the tithes of corne, wine, oyle, herbes, herds, slocks; they had forty eight cities set forth for them, with the sields round about them, to the extent of two thousand cubits every way: They had the first fruits of wine, oyle, wool &c. in a large proportion; he was held to be a man of an evill eye that gave lesse then the sixtieth part: They had the first-borne of cattle, sheep, Beeves,

Cafe 7.

Beeves, goates; and the price of the rest, upon redemption: even the first-borne of men must ransome themfelves at five shekells a man; They had the oblations and vowes of things dedicated to God: They had the ample loaves (or * cakes rather) of shew-bread; and no small share in meat-offerings, finofferings, trespasse-offerings, heave-offerings, shake-offerings; of facrifices eucharisticall they had the breft and shoulder; of other, the shoulder, and the two cheeks; year the very burnt-offerings afforded them an hide: Besides all these; all the males were to appeare before the Lord thrice a yeare; none were exempted (as their Doctors tell 0 2 us)

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* 10 hand breadths long, five broad, feven fingers high, Dec.3.

us)but servants, deafe, dumb, idiots, blinde, lame, defiled, uncircumcifed, old, fick, ten; der and weake, not able to travell, and no one of these which came up might appear empty-handed.

What doe I offer to particularize: there were no lesse then twenty-foure gifts allotted to the priests, expresly in the law; the severalls whereof who fo defires to fee, may finde in the learned and profitable Annotations of Mr. Ainsworth, out of Maimonides.

H Ainfworthin Lev. 21.9 ex Maimonide.

2. We can have no reason to imagine, that the same God who was so bountifull in his provisions for the legall ministery, should beare lesse respect to the Evangelicall;

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which is far more worthy and excellent then the other: Justly therefore doth S. Paul argue from the maintenance of the one, a meet proportion for the fit sustentiation of the other.

Case T.

1 Cor.9.13.

3. It is not fit for Gods ministers to be too intent to matter of profit; their main care must be the spirituall proficiency of the foules of their people; the fecular thoughts of outward provifions must come in onely on the by; but howfoever they may not be intangled in worldly affaires, yet they ought in duty to cast so much eye upon these earthly things as may free them from neglect; Itisto Timethy that S. Paul writes that if any man pro-

1 Tim. 5.8.

Dec.3.

provide not for his own, and especially for those of his owne house, he hath denied the faith, and is worse then an Infidell.

4. Under the law the tenth part was precifely allotted by the owner of all things, for the maintenance of the facred Tribe: And if the wife and holy God had not found that a meet proportion for those that served at his altar; hee had either pitched upon some other, or left it arbitrary: yea even before the law, Abraham (and in his loynes Levi himselfe) paid tithes to Melchisedec the priest of the most high God; and whether it were by his example, or by fome naturall instinct, we finde the very heathen

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Heb.7.4.

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Case 7.

heathen nations, after some great victory atchieved, were wont to devote still the rithe of their spoiles to their Deities: fo Camillus, when he had after a long siege taken the rich City Vejos, (a place of fuch importance, that upon the taking ofit, he wished some great crosse might befall Rome for the tempering of fo high a felicity) he prefently offereth the tithe to his Gods: yea it was their custome who were most devout to confecrate the tithe of all their increase to those Gods they were most addicted unto; in fo much as the Romans noted it in their Lucullus, that he therefore grew up to fo vast an estate, because he still devoted the

Topeg değ Sexditlu, &c Clem. Alex. Strom. 1.

tithe

Dec. 3. Plin.l. 12. Bongus de num. Myster. num. 10. And Pliny tells us that when they gathered their Frankincense, none of it might be uttered till the Priest had the tithe of it set forth for him.

5. There can be no good reason given, why we may not observe the very same rate of proportion in laying out the maintenance of the ministery under the Gospell; and if these rules and examples be not binding, (fince Religion confisteth not now in numbers at all) yet there is no cause why Christian Kingdomes, or Commonwealths may not fettle their choice upon the fame number, and quantity with both Jewes, and Gentiles.

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Case 7.

this Kingdome have fet out fame proportion of Tenthes for this purpose; If therefore there were no other obligation from the law of God or of the Church, nor any precedents from the practife of the rest of the world, yet in obedience to our municipall lawes, we are bound to lay forth the tenth part of our increase to the maintenance of Gods service; and that tenth is as truly due to the minister, as the nine parts to the owner.

7. Since the tenth part is in the intention of the law both civill and ecclesiasticall, dedicated to the service of God; and in the meere intuition thereof, is allotted to Gods ministers, there can bee

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Dec. 3.

no reason why it can be claimed, or warrantably received by Lay persons, for their proper use and behoofe; so as this practife of Impropriation, which was first set on foot by unjust and facrilegions Bulls from Rome, is justly offensive both to God, and good men; as mif-deriving the well meant devotions of charitable, and pious foules into a wrong channell. Nothing is more plaine then that Tithes were given to the Church; and in it, to God: how therefore that which is bequeathed to God may be alienated to fecular hands, let the possessions.

8. Let men be tied to make good the Apostles charge (fince the legall rate

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displeases) and it shall well satisfie those that wait upon Gods services under the

Gospell; The charge of the Apostle of the Gentiles, is:

Apolitie of the Gentiles, is: Let him that is taught in the

word communicate to him that teacheth, in all good things:

whereto he addes, Be not deseived, God is not mocked:

The charge is serious, and binding: and the required communication is universall;

and that with a grave Item of Gods strict observation of performance: we may not

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thinke to put it off, with Ambroles mis-pointed reading, of

refering the all good things to the teaching (a conceit

fenfibly weak, and mif-confructives) nothing is more evident then that it hath re-

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Cale 7.

Gal. 6. 6.

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Dec. 3.

lation to the communicating; wherein (for ought I fee) God intends a larger bounty to the Evangelicall ministery then to the legall; where all is to be communicated, what is excepted? All, not exclufive of the owner; but imparted by the owner; Let this be really done, there will be no reason to stand upon the Tenths.

9. But that this may be accordingly done, there is no law that requires a meere arbitrarinesse in the communicators: the duty of the teacher is punctually set downe, and so well knowne that the meanest of the people can check him with his neglect: and why should we thinke the reciprocall duty

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Cafe 7.

of the hearer fit to be left loose, and voluntrary: yet fuch an apprehension hath taken up the hearts of too many Christians, as if the contributions to their minifters were a matter of meere Almes; which as they need not to give, so they are apt, upon easie displeasures, to upbraid: But these men must beput in minde of the just word of our Saviour, The labourer is worthy of his wages: The ministery signifies a service; a publique service at Gods altar, wherto the wages is no lesse due, the the meat is to the mouth of him that pays it; No man may more freely speake of tithes then my selfe, who receive none, nor ever shall doe: Know then !

then ye proud ignorants, that call your Ministers your Almesmen, and your selves their Benefactors, that the fame right you have to the wholthey have to a part: God and the same laws that have feoffed you in your estates, have allotted them their due shares in them; which without wrong ye cannot detract: It is not your charity but your justice which they presse for their owne: Neither thinke to check them with the scornfull title of your fervants; servats they are indeed, to Gods Church, not to you: and if they doe stoop to particular services for the good of your foules, this is no more disparagement to them, then it is to the bleffed Angels

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gels of God, to be ministring spirits, sent forth to minister for them who shall be heires of salvation.

Shortly, it is the Apostles charge ratisfied in heaven, that they which labour in the word and doctrine should be remunerated with a double honour; that is not formall of words and complements, but real of maintenance; which he laies weight upon his time-

10. And furely how necessary it is that we should be at some certainty in this case, and not left to the meer arbitrary will of the givers, it too well appeares in common experience; which tells us how ordinary it is, where ministers depend upon vo-

luntary

Cafe 7. Heb.1,14.

1 Tim.5.

17.

luntary benevolences, if they doe but upon some just reproofe gall the conscience of a guilty hearer; or preach some truth which dif-relishes the palate of a prepossessed auditor, how he straight flies out; and not onely withholds his owne pay, but also withdrawes the contributions of others: so as the free-tongued teacher must either live by ayre, or be forced to change his pasture: It were easie to instance, but charity bids me forbearc.

Hereupon it is, that these sportulary preachers are faine to sooth up their many maissers, and are so gagged with the seare of a starving displeasure, that they dare not be free in the reprehensi-

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on of the darting sinnes of Case 7. their uncertaine benefactors; as being charmed to speake either placentia or nothing. And if there were no such danger in a faithfull and just freedome, yet how easie is it to apprehend, that if even when the lawes enforce men to pay their dues to their ministers, they yet continue so backward in the discharge of them: how much leffe hope can therebe that being left to their free choice, they would prove either liberall or just in their voluntary contributions?

Howsoever therefore in that innocent infancy of the Church, wherein zealous Christians, out of a liberall ingenuity were ready to lay

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Dec. 3.

downe all their substance at the Apostles feet, and in the primitive times immediatly subsequent, the willing forwardnesse of devout people tooke away all need of raifing fet maintenances for Gods ministers; yet now, in these depraved, and hardhearted times of the Church, it is more then requifite, that fixed competencies of allowance should by good lawes be established upon them; which being done by way of Tithes in those countries wherein they obtaine, there is just cause of thankfulnesse to God for so meet a provifion, none for a just oppugna-

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Cafe 8.

CASE VIII.

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Whether it be lawfull for Christians where they finde a country possessed by savage Pagans and Insidels, to drive out the native inhabitants; and to seize, and enjoy their lands upon any pretence; and upon what grounds it may be lawfull so to doe.

Mat unjust and cruell measure hath been heretofore offered by the Spaniard to miserable Indians, in this kinde, I had rather you should receive from the relation of their own Bishop, Bartolomeus Casa, then from my pen.

He can tell you a fad story

of millions of those poore savages made away, to make roome for those their imperious successors, the discovery of whose unjust usurpation, procured but little thankes to their learned professors, of Complutum and Salamanca: Your question relates to our owne case; since many thoufands of our nation have transplanted themselves into those regions, which were prepoffeffedby barbarous owners: As for those countries which were not inhabited by any reasonable creatures, (as the Bermudas, or Summer-Islands; which were only peopled with hogges, and deere, and such like brute cattle) there can be no reafon why they should not fall

Case 8.

to the first occupant; but where the land hath a known maister the case must vary: For the decision whereof some grounds are fit to bee laid.

No nation under heaven but hath some Religion or other, and worships a God such as it is, although a creature much inferiour in very nature to themselves; although the worst of creatures, evill spirits: and that religion wherein they were bred, (through an invincible ignorance of better) they esteeme good at least.

Dominion and propriety is not founded in Religion, but in a naturall, and civil right; It is true that the Saints have in Christ, the

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Lord of all things, a spirituall right in all creatures; All things are yours, (faith the Apostle) and you are Christs, and Christ is Gods: but the spirituall right gives a man no title at all to any naturall or civill possession here on earth; yea Christ himselfe, though both as God, and as Mediator, the whole world were his, yet he tells Pilate My Kingdome is not of this world, neither did he(though the Lord Paramount of this whole earth) by vertue of that transcendent soverainty put any man out of the polsession of one foot of ground which fell to him, either by birth, or purchase : Neither doth the want of that spirituall interest debarre any man from

Cafe 8.

from a rightfull claime and fruition of these earthly inheritances.

The barbarous people were Lords of their owne; and have their Sagamores; and orders, and formes of government under which they peaceably live without the intermedling with other nations.

Infidelity cannot forfait their inheritance to others; no more then enmity professed by Jewes to Christian religion, can escheat their goods to the Crownes under which they live; yea much lesse: for those Jewes, living amongst Christian people, have, or might have had meanes sufficient to reclaime them from their stubborn unbeliefe

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beleefe, but these savages have never had the least overture of any faving helps towards their conversion: They therefore being as true owners of their native inheritances, as Christians are of theirs, they can no more be forced from their possessions by Christians, then Christians may be fo forced by them: Certainly, in the same termes wherein they stand to Christians, doe also in their judgement, Christians stand to them; and if it would seeme hard to us, that an inundation of Pagans should (as heretofore it hath done) breake in upon us, and drive us out of our native possessions, how could it feem leffe unjust in us to them? Their

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Greg. cap. Pervenerabilem: & cap. Si non. 23.9 4. Iustum fanclumq; effe bellum quod'infide-Libus à Christianis infertur, ut eisimperio Subduis prad cari poffit Chrifti Evangelium, ne & imperio fubditi non ant prædicationi & conver honi corum qui crediderint impedimento effe poffint.

on of the faith: which must be perswaded, and not compelled; that fentence therefore of Pope Gregory; Justin fanctumque effe bellum &c. (That it is a just and holy warre which is by Christians made against Insidels, that they being brought under subjection, the Gospell of Christ might be preached unto them; lest that if they should not be subjected, they might be an hindrance to preaching, and to the conversion of those that would beleeve;) is furely either not out of the chayre, or beside the cushion; and better befeems a fucceffor of Romulus, then of Peter: I may not omit to acquaint you how hotly this maine question was

Anno. 1493.

was disputed by Spanish and Case 8. Italian Divines upon the very first entrance of this litigious usurpation: At which time Pope Alexander. 6. gave his large Decretory Bull to Ferdinand King and Ifabetta Queen of Caltile and Aragon for his expedition against the barbarous Indians of the then newly discovered world: Genesius Sepulveda a learned Spaniard writ then, in defence and incouragement of this holy invasion, a Dialogue, which he called Democrates secundus, which was published at Rome by the procurement of Amonius Augustinus, Auditor of the Palace; which no fooner came abroad, then it was eagerly fet upon, by the Divines both

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Decret. indultum Alex. 6. Super expeditione O.C. Populos in ejusmodi infulis & terris degentes ad Christianam religionem inducere velitis & debeatis dre.

of Italy and Spaine; amongst these later, the Doctors of Salamanca, ad the Complutenfes; and above them Antonius Ramirus Biship of Sego. via fall foule upon that offensive discourse, which Genefius would faine have vindicated by an Apologie, fet forth to that purpose; but how infufficiently, it were easie to show, if it were as needfull: But to make the matter good, he thinkes to back himselfe by the authority of great, and famous perfons, both Counfellors, and Doctors, by him cited; & above all by that loud Bull of Alexander; wherein yet for ought I fee, the charge which is laid upon those Princes is onely to reduce the people living

Cafe 8.

living in those Islands and countries to receive Christian Religion; which we may well apprehend more likely to be done by other meanes

then by the sword.

After much agitation it pleased the King of Spaine, to require the judgement of Franciscus à Victoria, the famous professor of Divinity at Salamanca, concerning this so weighty affaire; which he hath published with such wisdome & moderation, as so great a businesse required; stating the question aright on both sides; both shewing the insufficiency of the received grounds of that Indian expedition, and directing to those just motives, and rules of proceedings herein, as might

Franc. à Victoria Relect. de Indis.

be, in such a case, justifiable: to which grave and solid discourse of his, you may, if you please, be referred for surther satisfaction.

Onwards, I shall draw forth some few of such considerations from him as may serve for my present purpose.

First therefore it is lawfull for Christians to travell into any country under heaven; and as strangers to stay there, without any wrong done to the natives; A thing allowed by the law of nations derived from the law of nature; By which law it is every where held an inhumane thing to offer ill measure to a stranger. It is the argument that righteous Lot used to the worst of Pagans, the Sodo-mites;

Case 8.

Gen. 19.8.

mites; Onely unto thefe men do nothing; for therefore are they come under the Shadow of my roofe.

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And if before the division of nations, the earth lay freely open to al paffengers without scruple, to travell whither they pleased, surely, that partition was never intended to warrant a restraint: And if nature have made the Sea and all the In-lets of it common, it were very injurious to abridge any nation of the free use of so liberall an element.

Secondly, it is lawfull for us to use trafique with those Infidels and to interchange commodities with them: and to abide upon their coasts for negotiation; and to fish

in their sea, and to take part of those profits which nature hath made common to all commers: And if those Pagans shal oppose us in so warrantable courses, it will bee meet for us to tender them al faire satisfaction; perswading them that we intend no harme or prejudice to them in their persons, or estate; but much good to both; labouring to win them by all courteous demeanure; But if they shall fly out, notwithstanding all our kinde indevours, into a violent opposition of us; letting upon us in a hostile manner, offering to cut our throats in fo unjusta quarrell, it is lawfull for us to stand upon our defence, and to repell one force with

with another; and to use all convenient meanes for our fecurity; and if we cannot otherwise be safe, to raise bulwarks or fortifications for our owne indemnity; and if we finde our felves overpowered by implacable Savages, to call for the aid and assistance of our friends, and (if the enmity continue and proceed) of our Princes: fince the just cause of warre is the propulsation of publique injuries; and such injury is as great, as barbarous.

But if not so much cruelty of disposition as feare and suspition of a strange nation shall arme them against us; our care must be so to manage our own defence, as may be least offensive to them; and

P 5 there-

therefore we may not take this occasion of killing their persons, or sacking their townes, or depopulating their countries; for that in this case they are no other then innocent.

If after all gentle intreaties, courteous usages, and harm-lesse selfe-desence, they shall persist in a malicious hostility and can by no meanes be reclaimed from their impetuous on-sets; there is now just cause not to deale with them as innocents, but as enemies: and therefore to proceed against them accordingly.

But an higher and more warrantable title, that we may have to deale with these barbarous Infidels, is, for the

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propagation of Christian Religion; and the promulgation of the Gospell of Jesus Christ amongst these miserable favages: For which wee have good ground from the charge of our Saviour : Goe preach the Gospell to every erature; and he that was in bonds for the name of the Lord Jesus, tells us, the word 2Tim.2.9. of God is not bound; not bound, either in fetters, or within limits: Oh that we could approve to God, and our consciences, that this is our maine motive and principall drift in our western plantations; but how little appearance there is of this holy care and indevour, the plane dealer upon knowledge hath sufficiently infor-

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med us; Although I now heare of one industrious spirit that hath both learned the language of our new-Islanders, and printed some part of the scripture in it; and trained up some of their children in the principles of Christianity: a service highly acceptable to God, and no lesse meritorious of men: The Gospell then may be, must be preached to those heathens, (otherwise they shall perpetually remaine out of the estate of salvation) and all possible meanes must be used for their conversion; But herein I must have leave to depart from Victoria, that he holds it lawfull if the favages doe not freely permit, (but goe about to hinder) the

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Case 8.

the preaching of the Gospell, to raise warre against them; as if he would have them cudgelled into Christianity: furely this is not the way: It is for Mahumetans to professe planting religion by the fword; it is not for Christians; It is a just clause therefore, that he puts in, that the flaughters hereupon raised may rather prove an hinderance to the conversion of the favages, as indeed it fell our; the poore Indians being by these bloody courses brought into fuch a detestation of their masters, the Castilians, that they profest they would not go to heaven if any Spaniards were there.

The way then to plant the Gospelof Christ successefully

among those Barbarous foules, must be onely gentle, and plaufible: first, by infinuating our felves into them by a discreet familiarity, and winning deportment, by an holy and inoffensive living with them; by working upon them with the notable examples of impartiall justice, frict piety, tender mercy, compassion, chastity, temperance and all other Christian vertues; and when they are thus won to a liking of our persons, and earriage, they will be then well capable of our holy counfels; Then will the Christian faith begin to relish with them; and they shall now grow ambitious of that happy condition, which they admire in us:

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us: Then shall they be glad to | Cafe 8. take us into their bosomes: and thinke themselves blessed in our fociety, and cohabitation: Loe this is the true way of Christian conquests; wherein I know not whether shall be the greater gainer, the victor, or the conquered; each of them shall blesse other, and both shall be blessed by the Almighty.

CASE IX.

Whether I need in case of some foule fin committed by me. to have recourfe to Gods Minister for absolution; and what effect I may expect shere-from.

Meane would do well betwixt two extremes; the

the carelesse neglect of our spirituals fathers on the one side, and too consident reliance upon their power, on the other: some there are that doe so over-trust their leaders eyes, that they care not to see with their owne; others dare so trust their owne judgement, that they thinke they may sleight their spirituals guides: there can be no safety for the soule, but in a mid-way betwixt both these.

At whose girdle the keyes of the kingdome of heaven doe hang, me thinkes we should not need dispute, when we heare our Saviour so expressly deliver them to Peter, in the name of the rest of his fellowes; and afterwards

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wards to all his Apostles, and their lawfull successors in the dispensation of the doctrine and discipline of his Church: In the dispensation of doctrine to all his faithfull Ministers under the Gospell; In the dispensation of discipline to those that are entrusted with the managing Church-government; with these latter we meddle not; neither need we, if we had occasion; after the so learned and elaborate difcourse of the power of the Keyes set forth by judicious Doctor Hammend; to which I suppose nothing can be added. The former is that which lyes before us: Doubtlesse, every true minister of Christ hath by vertue of his first

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first and everlasting commission, two keyes delivered into his hand; the key of knowledge; and the key of spirituall power: the one, whereby he is enabled to enter and fearch into, not only the revealed mysteries of salvation, but also, in some fort, into the heart of the penitent; there discovering (upon an ingenuous revelation of the offender) both the nature, quality, and degree of the fin; and the truth, validity, and measure of his repentance: The other whereby he may in some fort either lock up the foule under fin, or free it from sinne : these keyes were never given him, but with an intention that he should make use of them upm-

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Case 9

on just occasion. The use that he may and must make of them, is both generall, and speciall: Generall; in publishing the will and pleafare of God fignified in his word, concerning finners; pronouncing forgivenesse of finnes to the humble penitent, and denouncing judgment to the unbeleeving, and obdured finner: In which regard, he is as the herald of the Almighty, proclaiming warre and just indignation to the obstinate; and tendring termes of pardon and peace to the relenting and contrite foule: or rather, as the Apostle stiles him, Gods ambassador offering and suing for the reconciliation of men to God; and if that be refused,

2 Cor.5.

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fused, menacing just vengeance to finners.

Speciall, in a particular application of this knowledge and power to the foule of that finner which makes his addresse unto him: Where in must be inquired both what necessity there is of this recourse, and what aide and comfort it may bring unto the soule.

Two cases there are wherein certainely there is a necessity of applying our selves
to the judgement of our spirituall guides; The first is
in our doubt of the nature
and quality of the fact; whether it be a sin, or no sin; for
both many sinnes are so guilded over with faire pretences
and colourable circumstances,

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ces, that they are not to be described but by judicious

eyes; and some actions which are of themselves indifferent may by a scrupulous consci-

ence be mistaken for hainous offences: whither should we goe in these doubts but to

goe in these doubts but to our Counsaile learned in the lawes of God; of whom

God himselse hath said by his Prophet, The Priests lips should keep knowledge; and

they should seeke the law at his mouth; for he is the messenger of the Lord of hosts.

The second is in the irresoluble condition of our soules after a knowne sin committed; wherein the burdened conscience not being able to give ease unto it selfe seeks for aid to the sacred hand of Gods PeniCase 9.

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Case 9.

norant quack falvers, but feek to a learned and experienced Physitian for the prescription of some sure remedies; whereas, if it be but for a fore finger, or a tooth-ach, we care onely to make use of our owne receits: And so in civill quarrells; if it be only some sleight brabble, we thinke to compose it alone; but if it be some maine question importing our freehold, we are glad to waite on the staires of some judicious Lawyer, and to fee him for advice: How much more is it thus in the perilous condition of our foules; which as it is a part farre more precious then its earthly Tabernacle, so the diseases wherero it is subject, are infinitely more

more dangerous, and deadly.

Is your heart therefore embroyled within you, with the guilt of some hainous sin! labour what you may to make your peace with heaven; humble your selfe unto the dust before the Majesty whom you have offended; beat your guilty brest, water your cheeks with your teares; and cry mightily to the father of mercies for a gracious remission; but if after all these penitent indevours you finde your soule still unquiet, and not sufficiently apprehensive of a free and full forgivenesse, betake your selfe to Gods faithfull Agent for peace; run to your ghostly Physitian, lay your bosome open before him; flatternot your

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your owne condition; let neither feare nor shame stay his hand from proving and searching the wound to the bottome; and that being done, make carefull use of such spiritual applications as shall be by him administred to you: This, this is the way to a perfect recovery, and fulnesse of comfort.

But you eafily grant that there may be very wholsome use of the ghostly counsell of your Minister in the case of a troubled soule; but you doubt of the validity and power of his absolution: concerning which it was a just question of the Scribes in the Gospell; Who can forgive sinnes but Godonely? Our Sa-

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viour therefore to prove that

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Dec.3.

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he had this power, argues it from his divine omnipotence; He onely bath authority to forgive finnes, that can fay to the decrepit paralytick; Arise, take up thy bed and walk; none but a God can by his command effect this; he is therefore the true God that can and may absolutely say, Thy finnes be forgiven thee: Indeed, how can it be otherwife : Against God onely is our fin committed; against man onely in the relation that man hath to God; He onely can know the depth of the malignity of fin, who onely knows the foule wherein it is forged; He onely who is Lord of the foule, the God of spirits, can punish the soul

for finning; He onely that is

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infinite can doome the finfull foule to infinite torments; He onely therefore it must be, that can release the guilty foule from sin, and punishment. If therefore man, or Angell shall challenge to himselfe this absolute power to forgive sinne, let him be accursed.

Yet withall it must be yeelded, that the blessed Son of God spake not those words of his last commission in vaine; Whose soever sinnes ye remit, they are remitted unto them, and whose soever sinnes yee retaine, they are retained; neither were they spoken to the then present Apostles onely, but in them to all their faithfull successors to the end of the world.

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Case 9.

Ioh, 20, 23.

Dec . 3.

It cannot therefore but be granted, that there is some kinde of power left in the hand of Christs ministers, both to remit and retaine finne: Neither is this power given onely to the Governours of the Church, in respect of the censures to be inflicted, or relaxed by them; but to all Gods faithfull ministers, in relation to the fins ofmen: A power not foveraine and absolute, but limited and ministeriall, for either quieting the conscience of the penitent, or further aggravating the conscience of fin and terror of judgement to the obstinate and rebellious; Neither is this onely by way of a bare verball declaration, (which might probe

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proceed from any other lips) but in the way of an operative and effectuall application, by vertue of that delegate, or commissionary authority, which is by Christ entrusted with them: For certainly, our Saviour meant in these words to conferre somewhat upon his Ministers, more then the rest of the world should bee capable to receive, or performe: The absolution therefore of an authorized person must needs be of greater force and efficacy, then of any private man, how learned or holy soever, since it is grounded upon the institution and commission of the Sonne of God, from which all power and vertue is derived to all his ordinances:

Case 9

Dec.3.

and we may well fay, that whatfoever is in this case, done by Gods minister (the Key not erring) is ratissed in heaven: It cannot therefore but be a great comfort, and cordiall assurance to the penitent soule, to heare the messenger of God (after a carefull inquisition into his spirituall estate, and true sight of his repentance) in the name of the Lord Jesus pronouncing to him the sull remission of all his sinnes.

And if either the bleffing, or curse of a father go deeper with us, then of any other whosoever; although but proceeding from his owne private affection without any warrant from above; how forcible shall we esteeme the

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Case 9.

the (not so much apprecatory, as declaratory) benedictions of our spiritual fathers, sent to us, out of heaven?

Although therefore you may perhaps, through Gods goodnesse, attaine to such a measure of knowledge and resolution, as to be able to give your felfe satisfaction concerning the state of your soule; yet it cannot be amisse, out of an abundant caution to take Gods minister along with you, and making him of your spirituall counsaile, to unbosome your selfe to him freely, for his fatherly advice and concurrence: The neglect whereof, through a kinde of either strangenesse, or mis-conceit, is certainly not a little disadvantageous

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Dec 3.

to the foules of many good Christians. The Romish Laity makes either Oracles, or Idols of their ghoftly fathers; if we make Ciphers of ours, I know not whether wee be more injurious to them, or our selves. We goe not about to rack your consciences to a forced, and exquisite confession, under the paine of a no-remission; but we perswade you for your owne good, to be more intimate with, and leffe referved from, thosewhom God hath set over you for your direction, comfort, salvati-On.

Case 10.

CASE X.

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Whether it be lawfull for a man that is not a professed Divine, that is, (as we for distinction are wont to call him) for a laick person, to take upon him to interpret the Scripture.

MAny distinct considerations had need to make way to the answer.

First, it is one thing for a man to interpret scripture, another thing to take upon him the function of preaching the Gospell, which was perhaps in your intention; this is farre more large then the other; every man that preacheth, interpreteth the scripture; but every one that Q 5 in-

Dec. 3.

interprets scripture, doth not preach: To interpret scripture is onely to give the sense of a text; but to preach is to divide the Word aright; to apply it to the conscience of the hearer; and in an authoritative way to reprove finne, and denounce judgement against sinners; to lay forth the sweet promises of the Gospell to the faithfull and penitent; for the performing whereof there must be a commission to Gods minister from him that sends him; upon which the Apostle hath pronounced a (Tis ingr (S.) Who is sufficient for these things ?

Secondly, it must be considered in what nature, and within what compasse the in-

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terpretation is; for doubtlesse the just degrees of callings must be herein duely observed; whether in a publique way, as Pastors of congregations; or in a private way, as masters of families; whether in the schooles, in a meer Grammaticall way; or in the Church, in a predicatory.

Thirdly, it must be considered, as what the calling, so what the gifts are of the interpreter: for surely, meere interpretation doth not depend upon the profession, but upon the faculty of the undertaker; whether he bee learned, or ignorant; whether skilfull in languages and arts (which certainly must be required in whosoever would.)

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Dec. 3.

put forth his hand to so holy and great a worke) or whether inexpert in both: where these gifts of interpretation, and eminent endowments of learning are found, there can be no reason of restraining them from an exercise so beneficially edificatory to the Church of God: without which the truth of Christian religion had wanted much both ofher vigour, and lustre in all generations. How famoufly is it known that origen before his entring into holy Orders, even at eighteen yeares of his age entred into that great worke of his Catechifings ? Apollos Alexandrian was an eloquent man, and mighty in the scriptures, and taught diligently

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the things of the Lord; yet knew nothing but the Baptisme of John: till Aquila and Prifeilla took him to task, and more perfectly expounded to him the way of God; and what happy use it pleased God to make of laick hands, for both the defence and propagation of the Gospell, we need no other witness then S. Ferome; who hath memoriz'd amongst the primitive Christians, Ariftides, Agrippa, Hegesippus, Justin, Musanus, Modestinus, both the Apollonii, Heraclius, Maximus, and many others, who God raised up amongst the learned laity of those times, to Apologize for Christianity , And in the last foregoing age, how scarce removed out of our fight, are Lau-

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Dec. 3.

Laurentius Valla, both the Earles of Mirandula, Capnio, Eagins, Erasmus, Faber, and the rest of those famous waymakers to the fucceeding restitution of the evangelicall. truth; And what a treasure in this kind had the Church of God loft, if it should have miffed the learned annotations upon the scripture, derived to us from the hands of Mercerus, Foseph Scaliger, Drusius, both Casaubons, Tilenus, Grotius, Heinfins, Selden, and fuch other expert Philologists, never initiated into facred Orders?

Fourthly, due and serious consideration must be had of the interpretation it selfe; that it be genuine, and orthodox: for there can be no-

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Cafe 10

thing in the world more dangerous then to mif-conftrue God speaking to us in his word; and to affixe upon his divine oracles a sense of our owne, quite dissonant from the intention of that spirit of truth: care therefore must be taken that the interpretation given be every way conforme to the Analogy of faith, and fully accordant to other fcripture; the neglect whereof, through either ignorance or mesprison hath bred many foule and perilous Solœciimes in Divinity; To give you a taste of too full a dish: In the 18. of Ecclefiasticus, where the Vulgar reades, Hee that lives for ever created all things at once: fome, and those no meane ones, of the Ancient.

Eccle. 18.1.

Dec.3.

ent, followed also by later interpreters, have been misled into an ungrounded conceit of an instantany and entire creation of the world and all the parts thereof, in the first moment of time, whereas the scripture hath expresly and punctually fet down the severall six dayes, wherein each part of it was distinctly formed: which those misconstruers are faine to understand of the distinct notifications given to the Angels concerning this almighty worke: and what curious subtilties have been hereupon raised by our school Divines, is more fit to be past over with an unpleasing smile, then to be ferioufly recounted; whereas the intention of the place,

communiter. Montanus.

Cafe 10.

place, is onely to fignifie that God made all things in the univerfall world that have any being; intimating not the time of creation, but (as our Version hath it) the Generality of things created.

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Estii Annotat.in locum.

What advantage the blafphemous Arrians have formerly taken from the mifinterpretation of Proverbs 8. where Wisdome is brought in (by the mistaking of some ancients) to say, The Lord created me (in stead of possessed me) in the beginning of his way, before his workes of old, is more worthy ofindignation, then any further prosecution. But most pregnant and notable is the groffe mefprison of a late famous schoolman, Franciscus d' Arriba.

الدراد . Prov.8.22.

Dec. 3.

riba, Confessor to the late Queen mother of France, who to maintaine that new way of reconciling that scholasticall difference among the Roman doctors, concering the effectuall aid of Divine Grace, depending, or not depending upon free wil, (about which he had fixty daies disputation with Cardinall Ascely and Cardinall Bellarmine; shewing how it might well be maintained without the devices of phyficall predeterminations, or that scientia media of our late Jesuites) relies chiefly for his opinion upon that text of

Vulg. Tra. El.45.11. opinion upon that text of Esay 45. 11. Hac dicit Dominus sanctus Israelis qui fecit ventura, Thus saith the Lord the holy one of Israel who hath

Cafe 10,

hath made things to come: following a mif-edition of the Vulgar, which perverts the fense, by making a wrong stop in the sentence, whereas their owne Montanus, and any other that hath but seen the Hebrew text, would reade it Hac dicit Dominus fanctus Ifraelis qui fecit eum; Ventura interrogate me : Thus faith the Lord the holy one of Ifrael, and his maker: Aske me of things to come concerning my sonnes, &c. referring the ventura, (things to come) to the following interrogate. So Poza, the late extravagant Doctor of Spaine, in the maintenance of his novell opinions against Fathers and Councells, preffed against him, stands upon his defence,

Dec. 3.

Ecclus. 25.

Bleffed is he that preaches a word unheard of.

fence, out of the Synod of Constantinople, Act. 5. grounded upon the words of miscalled, Solomon; Beatus qui predicat verbum inauditum; corrupting both the text and the Councell; whereas it should be read, verbum inauditum obedientis: and the Councell hath it aright, (eis ล่างกับ บังเลขอบ่องได้:) as ours turnes it likewise, well is hee that speaketh in the eares of them that will heare: It were easie to fill a just volume with inflances of this kinde.

To this purpose it will be requisite to make use of all those helpes that may enable an interpreter to understand the scriptures; whether those that are internall in it selfe; or externall from other supplies:

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Case 9

plies; of the former kinde are a diligent fifting of the context and inference; and a careful comparing & conferring of one scripture with another; for all truthes agree with themselves; and this word of God is the Sun that gives us light to see it selfe Externall; where it will be needfull to call both for the aid of arts and tongues; and for the testimonies and judgments of reverend antiquity, and the not-to be-neglected authority of moderne Doctors; and thirdly, a due regard of those golden rules of Interpreting; which are recommended to posterity by the learned pennes of Clemens of Alexandria, Hierome, Augustine, Gerson, Hyperius, Illyricus Dec . 3.

Illyricus, Jacobus Matthias, and others; which, as meet for a volume apart, may not expect to finde a roome in fo concise a Tractate.

The want and neglect of all which requisites what strange worke it must needs make with the simple and unlettered, we may well conceive, when great Clerkes have hereupon bewrayed fo foule and palpable mif-carriage.

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Ioh, 13.30.

Albinus, the learned mafter of Charles the great, writing upon Iohn, finding it faid of Judas that having received the Sop, he went immediatly out; Et erat nox; and it was night; puts both together as spoken of Judas; He (faith he) was the night that went

Eratautem ipse nex.

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Case 10.

went out; as Christ is the day that gives knowledge to his disciples, that were day too; so fudas the night gives knowledge to the Jewes that were night, of a traitotous wickednesse, &c.

What work Bernard, (who shewed in this, that he saw not all things) makes of the Demonium meridianum, the noone-day Devill, in one of his Sermons, is evident to be feen; yet had he been as well feen in language as he was fervent in his devotion; hee had spared that discourse as tailed from a meere ungrounded interpretation; there being no Devill in the text; but a phantasme of his deluded imagination: And if I should fet forth the descants that Pfal. 91.6. Bern. Ser.

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Dec.3.

our Postillers run upon the names of Fobs three daughters, I should seeme to you as apt to sport in so serious a subject; and if I could thinke it worth the labour of gathering up the wild senses, far-fetcht Allegories, absurd inferences, that ignorant Friers have fastned upon scripture, it is not a small skin that would containe that Tome.

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Surely that man, whosoever he be, that would bee
hoising faile in these deeps
of scripture, had need to be
well ballast, and well tackled,
and skilfull in the Compasse,
else he will have much adoe
to escape a wrack: He that wil
walk in pathes of danger had
need to have his eyes about
him;

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him; an hoodwinkt man Cafe I 2. may easily be carried against

apost: and he that hath not light enough to fee his owne way had need to take heed

whom he trufts: He that would blind-fold follow

those very interpretations which the Church of Rome

hath commended for authenticall, would run into

foule and dangerous abfurdities: let me single out some

few confessed by their owne

Estins, and Lucas Brugensis; fuch as are plainly contra-

dictions to Scripture, and do, as it were, give the lye to

Gods spirit. Such is that 2 Sam. 8. 18. Filit autem

David (acerdotes erant: The Sonnes of David were Priests:

whereas every child knowes that R

2 Sam. 8.

18.

Dec.3.

* The word in the original is which every man knowes to be used ordinarily to signific either Principes, or Sacerdotes, as Exod.2.

1 Sam. 23.

26.

that the Scripture frequently tells us none could be priests but of Agrons order and tribe; out of Levier loines. and that Davids was of the house of Judah the Septum gint rightly turnes it abhapa xac. Agains who that shalb finde it in the Valgar interw pretation : David rdesperabat cor. David despaired shat he could escape from the face of Saul: would not inferre that he utterly distrusted Gods assurance by the prophet of his future Kingdome, whereas the original is by Esting his owne confession, Festina bat, as we also turne it, David made hast to get away or. He that should finde it reported of one of the fonnes of Er,

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that made the sun to stad stil) would justly wonder what kinde of man this was, that had been so long obscured from the world, and yet should have done so strange a miracle as never was done but by Ioshua; whereas hee that lookes into the text, shall finde no mention at all of the Sunne; but onely of the meere proper name of

He that shall read in lob, where God speakes of the Leviathan; Cum sublatus fuerit (i. Leviathan) timebunt Angeli et territi purgabuntur; when he raiseth up himselfe the Angels shall feare, and being terrissed shall be purged; would sure thinke this Whale were the Devill (as some an-R 2 cients

lochim the sonne of Er.

Case 10. 1 Chron. 4.22.

Job 41.25.

Dec.3

cients have mistaken him)and may well wonder how the good Angels (being celeftial) spirits) could be capable of feare; or how the evill Angels could be capable of purging: when the text hath no mention, nor thought of Angels; but onely fignifying the strength and terriblenesse of the Whale expresses it in these words ; When he raiseth up himselfe the mighty are afraid; by reason of breakings they purific themselves. Solomon was faulty enough in his Idolatry, but he that shall read I Kings 11. 5. (in the Vulgar interpretation) that he went after Chamosh the God of the Moabites, shaladd one Idol moreto him then we

finde him guilty of. Solomon

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was in his holy and regular times, full of heavenly meditations, and divine ditties: but he that should follow the Vulgar interpretation, would fasten upon him almost foure thousand more then ever he owned.

After that Merab Sauli eldest daughter was given away to Adriel the Meholathite, contrary to engagement, he that will follow the Vulgar, must say that David straight fell in love with Michal, the other sister, whereas the text tells us that Michal fell in love with him.

He that should finde in the Vulgar construction, that Saul fung all the day naked before Samuel in Natuh, would think his new proR 3 phe-

Case 10.
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2 uinque
millia, for
mille &
quinque,
five thousand, for a
thousand
and five.
1 Sam. 18.

20.

Dec.3.

1 Sam. 19.

Cecinit for

Pfal.71.15.

The word is DITOD numeros.

Rev. 15.6.

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\[\sqrt{\text{iov \ \text{4}}} \]

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Rcv.15.6.

phefying had put him into a merry veine; whereas the text onely tells us that he fell downe stripped of his wonted clothes.

He that should finde in the Vulgar, David reporting of himselfe [Non novillatern turam] I know no learning, would wonder at the prophets disparagement of his skill, who had elsewhere professed himselfe wifer then his teachers; whereas all that he saies, is, that the mercies and blessings of God upon him have been so many, that he knowes not the numbers thereof.

He that should finde the seven Angels in the Revelation Vestines lapide, clothed with stone, would sure think

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Ecclus. 7.

them buried; whereas the Case 10. text is, clothed in pure white linnen.

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And what doe you imagine would a plaine reader thinke of that charge of the wife man ; Noli velle mentiriomne mendacium; Be not willing to lye all manner of lies; would he not straight fay : some belike I am allowed to lye? whereas the words are peremptory even in Estius his reading, according to ours; Vie not to make any manner of lyes.

Yea that very correction of the Vulgar interpretation. which Brugensis allowes and magnifies I Cor. 15.51. with what fafety can it paffe the judicious, whiles he reades,

R 4 OmDec. 3.
3 Cor. 15.

51.

Omnes quidem refurgemus, sed non omnes immutabimur; We shall all rise againe, but wee shall not all be changed : For how can those rise againe, that never died? how are those capable of a resurrection, which are onely changed ? Whereas the just sense runnes according to our Version, We shall not all sleep, but we shall all be changed. For those that are found alive at our Saviours second comming shall not fleep in death; yet both they and the formerly dead must undergoe a change.

you with instances; How must he that reades the Apocryphall Ecclesiasticus, needs

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Cafe 10.

fay that this man (how ob-(cure foever in his authority) faw more and clearer then all the acknowledged prophets of the old Testament; for he hath forerold us expresly the very name of our Lord Jesus which none of them ever before hand published: For he fpeaking of the deep fea, is read in the Vulgar to fay, Plantavit illum Dominus lefus: The Lord Iesus planted it: Ishame to thinke what sport a Jew will make of fuch a groffe mistaking; wherein mous Jesus is mis-read, for mous: Island: fo as the right sense is onely this; God by his counsell appealeth the deep, and planteth Islands therein; But I forbeare; only if you have too much leafure, you R.5. may !

Ecclus.43.

23

Neh. 6. 2. Percutiamus fædus in vitulis. may be pleased to cast your eye upon the margin.

in campe uno: for, In viculis, in campo, Ono. Auni nofii ficut aranea meditabuntur, Pfal. 90, 9. for, as a tale that is told: Concupifcentia fpadonis devirginabit juvenculan Ecclus. 20. 4. Super for Subter. Gen. 35. 8. Vulvera for ulcera, Exod. 9.9. Difintum for Bis tindum, Exod. 49. 28. Sanctuarii, for Sancto atrii, Levit 6. 16. Tanfi for Tufis, Levit. 22. 24. Neque for atque, Levit. 15.11. Solis, for Salis, Deut. 29. 23. Non fuerit, for fuerit, Josh. 2. 18. Occidentalem, for Orientalem, Jos. 12. 3. Hamata for Squamata, 1 Sam. 17. 5. Pagi habitahun for pagi habitabuntur I Sam. 27.8. Indamior Ludan 2 Sam. 6. : O. Tumulum for tumulium 2 Sam. 18. 19. Lapides feculi, for Sacculi, Prov. 16, 11. Ad alia for ad alta Prov. 26. 2. Sponfa for Speciofa Cant. 2. 13. Adultera for adulta Ecclus 42. 9 Infidelem for fidelem Ela. 17.10. Imitantes for irritantes: Terra for ter Ecclus. 48: 2. 3. Obsurduit for obsorduit Ela. 33.19 Impruder tem for impudentem Ela. 33. 19. Faunis ficariis for fatuis ficariis, Ela. co. 29. Vinctas for tinetas. Ezec. 23.13. Ejiciat, for mittat. Mat. 9. 38. Angelus for Angulus Zach. 10. 4. Servivit for fervavit Ofe. 12. 12. Confessus, for confusus Mar. 8. 38. Sexta for terin Mar. 15,25 Mytelem for Melita Acts 28.1. Compellebantur, for Complebantur, Luc. 8. 23. Placuerunt for Latuerunt. Heb. 13. 2. Adduxiftis for addixiftis. Jac. 5. 6. In carne for in carcere i Pet. 3.19. Appropinquabit for appropringuavit I Pet. 4.7. Tubarum tor turbarum, Revel. 39. 1. De igne Chaldagrum for de Vr Chaldagrum. Nehem. 9.7.

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Cafe 10:

In these and many more (for I meant to give you but an affay) the mistakes are important, and such as make no small change in the text; which I have therefore produced that I might let you see how easie it is for a man that takes all things upon trust to be abused by his credulity; and how unsafe it is much more for an unexpert and injudicious person to meddle with the holy Oracles of the Almighty.

The conclusion then must be, that how ever it may be lawfull for the eminently learned, either in schooles or families, (according as their calling may warrant them) to interpret even difficult scriptures, and to unty

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Des. 3.

the knots of a Text; yet fince not many are thus qualified, and those that are so qualified, if they neglect to follow the prescribed rules, may eafily miscarry, to the great perill both of their owne foules, and others; I should therefore advise that this may be the act of but some few choice persons, and of them, with all possible caution: and that ordinary Christians, if they have a desire, (besides all fundamentall truthes (which are laid downe openly and clearely in the facred word of God) to informe themselves in those darker verities, which lye hidden in more obscure scriptures) to have recourse to their learned |

of Conscience resolved.

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learned and faithfull Pastors; and rather to rest in that light which they shall receive from their well-digested instructions, then to relye upon their owne (perhaps consident, but much weaker) judgement.

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Cafe 10.

RESO-

Divers practicall Cafes

Dec. 4.

RESOLUTIONS.

The fourth Decade.

Cases Matrimoniall.

CASE I.

Whether the marriage of a sonne or daughter without or against the Parents consent may be accounted lawfull.



Atrimony, though not a Sacrament, yet a facred inftitution of God

for the comfort and propagation は一本

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Cafe I.

Thom. è Sanchez. Socies. Jes. I heol. De matrimonio

gation of mankinde; is fo fruitfull of questions as that Sanchez the Jestite hath stuffed an huge volume with them alone: it were pity that so many should in that eftare be necessary; we medle not with those secret, and (some of them) immodest curiofities: contenting our felves onely with those which meet us every day in the ordinary practife of men:wherof this which you have moved may well challenge the first place: A question wherein I was vehemently pressed in my late western charge, by some persons of greatest eminency in those parts upon occasion of some of their children undutifully carving for themselves in the choice

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Dec.4.

choice of their matches; The offended parents, in the height of their displeasure were very earnest to invalidate, and annull the marriage: I gave them in effect the same account of the point, which now I give to you: That this disallowed marriage was one of those things which are unjust and unlawful to be done, but being once done are valid.

How unwarrantable and injurious it is in the child to match himselfe without or against the parents consent, there needs no other Judge then the law of nature it self, which teacheth us that the child is no other then the peculiar goods, and living substance of the parent; yea, as some

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some Civilians have taught us to expresse it, he is pars viscerum matris, a part of the mothers bowells; and part of the purest substance of the father; and therefore ought no more to be exempted from the parents power of disposing, then the very lims of his owne body; upon this ground it was, that by the law of God it was lawfull for the Jewes, in case of extremity, to fell as themselves, fo their children alfo to fervitude; but to those onely of their owne nation: and in the law civill there is the like permission; although under certaine conditions; and particularly in an utter exigency, Victus causa; To the latter whereof, some expositors

Case 1. I2co.Leoniffa.Confil,Matrimon.49.

Exod.21.7 Deut.15. 12, 13.

L.z. c.De Patribus qui &c.

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Covarruv.
1.3.var.c.
14. ex Accursio & alliis.
Less.1.2,
c. 5.
Dub. 4.

tors hold so strictly, as that they will not admit this to be done for the redemption of the parent from death, or perpetuall bondage, but onely to preserve him from affamishing: wherein certainly they are over straight laced, and too much wedded to fyllables; it being questionlesse the intention of the law to comprehend all equallypressing necessities; to which they adde that this must be onely in the fathers power, and that to a child not emancipated, and left to his owne disposing: It is not in my way to dispute the case with them, take it at the caneft, it fufficiently shewes the great power that Nature it selfe yeelds to the parent over the child;

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child; By how much stronger then the parents interest is in the child, so much more wrongfull it must needs be in the child to neglect his parents in finally bestowing himselfe; And if we looke into the positive law of God, we shall sinche the child so wholly left to the parents will and disposition, as that he may, at his pleasure, dispense with, or frustrate the yow of his child made to

yow of his child made to God himselfe.

Neither do the Roman doctors generally hold otherwise this day in case of an under-age; and some of them extend this power yet surther; yet not without adistin-

ction: holding, that after the age of puberty, those Case 1.

Num. 30. 3, 4, 5, 6. &c.

Leff. de Iure l.2. c. 40. dub. 14.

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Divers practicall Cases

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Navar.enchir 4 præ. c.14.n.14. Filius qui parentibus in extrema necessitate constitutis

Gr.

vowes onely are in the mercy of the father, which may be prejudiciall to the government of the family, and paternall power; which is sufficient for my purpose in the question in hand.

And although those Cafuifts doe fufficiently doate upon their Monkery, and the vowes thereunto appertaining; yet they ascribe so much to the bond of filiall duty as that they teach, That a sonne which (his parents being in extreme need, and wanting his help) enters into a religious order; or comes not out of it (though professed) when he might be likely by his coming forth to be aidfull to his faid parents, is guilty of a fin against the fifth

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Case I.

fifth Commandement: so as even with them, the respect to a parent ought to overweigh a vow of religion; although consummate by a so-lemne profession.

But, that you may not object to me the age of the law as therefore abrogated because Mosaicall; heare what the chosen vessell saies under the new law of the Gospell.

If any man thinke that he behaveth himselfe uncomely towards his virgin if she passe the floure of her age, and need so require, let him doe what he will; he sinneth not; let her marry: Neverthelesse he that standeth stedfast in his heart, having no necessity; but hath power over his owne will, and hath so decreed in his heart that

Cor.7.

37.

Dec.4.

that he will keep his virgin, doth well &c. Loe, the Apostle supposeth it in the parents power either to keep his daughter a virgin, or to dispose of her in marriage: the is not her owne, either to hold, or give; but must be altogether ordered by the superiour will of a parent: Not, that any force is allowed either way, to be used towards the daughter; whether to continue her in a constrained virginity, or to cast her against her minde upon a dif-affected match; No, that God who disposeth all things sweetly, would have us doe so too; he allowes parents to be rulers of their children, but not tyrannes: what they doe therefore in this

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Cafe I.

this kinde, must be more by counfaile, then command: and with more fway of love, then authority: thus, confulting wifely with the state of times, and the childs difpolition, and abilities of conmining, must the parent cither keep his virgin, or labour for the provision of a meet confortship: Thus did the two great Patriarchs of Gods ancient Church, Abraham and Ifaac, provide fit matches for their holy feed, whiles the unholy provided unfie matches of for themselves Thus did their godly issue in all generations take their parents along with them in the choice of meet yoke fellowes whiles the godlesse; whether out of impetuous luft, or stubDec.4. Gen.28. stubburne disobedience, affect with Esau, to be their owne purveyours, to the great regret, and heart-breaking of their parents.

Lastly, the latitude that

Cor.7.

S. Paul gives of the liberty of marriage to all Christians is, Tantum in Domino; onely

in the Lord, Now how can that marriage be in the Lord,

which is against him? and how can that be other then against the Lord; which

is against the Lords commandement ? And what

commandement can be more expresse then, Honor thy father and thy mother; And,

Children obey your parents:

And what can be more contrary to the honour and o-

bedience due to parents, then

Gal.6. 1,2.

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Cafe I.

to neglect them in the maine businesse that concernes our lives: And what businesse can concerne our life so much, as the choice of a meet partner, with whom we may comfortably weare out all the daies of our pilgrimage on earth:

Doubtlesse then, we may in a generality safely conclude, that it is altogether unlawfull for a child to sleight his parents consent in the choice of his marriage. There may be some particular cases incident, wherein perhaps this may without sin or blame be forborne; as when the child either by generall permission, or former elocation shall be out of the parents disposing, or where the parent is de-

Dec.4.

fective in his intellectualls, or where the child lives in remotis, out of the compaffe of intelligence; or where the parent being averse from the true religion denies his confent to match with any but those of his owne straine; or shall upon other by occasions wilfully stand upon so unreasonable termes, that neither friends nor authority can over-rule him; But where these or the like preponderating exceptions doe not intervene, the child cannot without fin balke the parents consent to his choice in marriage.

But though such marriages without, or against confent, be not lawfully made; yet being once made, they are

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valid. The civill law, out of the grounds of policy, goes herein too farre, which sentenceth those marriages void, which are made without the consent of parents, or Guardians; But as matrimony hath something in it of Nature, fomething of Civility, fomething of Divinity, as instituted by God and by him to be regulated, fo fure this last interest ought to over-sway the other two; The marriage therefore thus made, being though faulty yet true, is doubtlesse after confummation indiffoluble. The parties repentance and the parents forrow may have leasure to afflict them, no power to relieve them.

Case I.

Matrimonia esse irrita &c.
Instit.de
nuptiis et,
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nuptiarú.
Ita et Evarist.in constit.edita
Anno C.
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CASE II.

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Whether marriage lawfully made may admit of any cause of divorce, save onely for the violation of the marriage bed by fornication or adultery.

Our Saviour hath so punctually decided the case in his divine Sermon upon the mount, that I cannot but wonder at the boldnesse of any man, who calls himselfe a Christian, that dares raise a question after so cleare and full a determination from the mouth of Truth it selfe.

Matt. 5.32.

Whosoever (faith he) shall put away his wife, saving for the cause of fornication, causeth her to commit adultery; and whowho foever shall marry her that is divorced, committeth adultery: Yet I finde this so evident an affertion checked by two sorts of adversaries; The one, certaine wild Novellists, who admit of very sleight causes of separation; the other, Romish Doctors, who plead for some other maine and important additions to this liberty of divorce.

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I have heard too much of, and once faw, a licentious pamphlet throwne abroad in these lawlesse times, in the defence, and incouragement of Divorces (not to be sued out, that solemnity needed not, but) to be arbitrarily given by the disliking husband, to his displeasing and unquiet wise; upon this S 3 ground

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Dec.4.

ground paincipally, that marriage was instituted for the help and comfort of man; where therefore the match proves such, as that the wife doth but pull downe a fide, and by her innate peevishnesse, and either fullen, or pettilli and froward disposition brings rather discomfort to her husband, the end of marriage being hereby frustrate, why should it not, faith he, be in the husbands power (after fome unprevailing meanes of reclamation attempted) to procure his own peace, by casting off this clogge, and to provide for his owne peace and contentment in a fitter match

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a Christian, pretending to Re- | Case 2. formation, should dare to tender so loose a project to the publique: I must seriously professe when I first did cast my eye upon the front of the booke, I supposed some great wit meant to try his skill in the maintenance of this so wild, and improbable a paradoxe; but ere I could have run over some of those too-well-penned pages, found the author was in earnest, and meant seriously to contribute this peece of good counsaile in way of Reformation to the wife and feafonable care of superiours: I cannot but blush for our age, wherein so bold a motion hath been, amongst others, admitted to the light: what will S 4

Dec.4.

will all the Christian Churchesthrough the world, to whose notice those lines shall come, thinke of our wofull degeneration in these deplored times, that so uncouth a designe should be set on foot amongst us:

Or how can they construe it other, then a direct contradiction to our Saviours sentence, in maintaining that practise, which he expressly professeth to oppose? for, what was the Jewish guise here checked by our Saviour, but a voluntary repudiation of a lawfull wife upon the termes of dislike, other then for fornication? Their misinterpretation of the law alluded unto, argues no lesse; The law alluded unto is, that

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of Deuteronomy; where God faies, When a man hath taken a wife and hath been her busband, and it Shall be; that she find not grace in hiseyes, because he bath found in her matter of nakednesse, he shall write her a bill of divorcement, and send her away: whereupon he inferres with an, Ego dico I fay unto you, Whosoever shall put away his wife saving for fornication, causeth her to commit adultery: the matter of nakednesse therefore, for which the Jewes were then wont to divorce their wives, (and offended in so divorcing

them) was any other difpleafing quality, befides the breach of wedlock through bodily uncleanenesse; for which onely had they dif-

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Case 2. Deur, 24.1.

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missed their wives, our Saviour had neither faulted their glosse, nor their practise, so as herein Christ the giver of the law, decides one of those great controversies, weh were agitated between the emulous schooles of Sammai, and Hillel: determining on Sammai's fide, that for no other nakednesse but that of adultery it was lawfull to divorce a wife: and flatly condemning by the like answerthan [wasar airiar] every cause of repudiation then ordinarily received; as it was by the Pharisee purposely propounded unto him.

Mat 1943.

Answerable whereunto is that of the prophet Malachi, who (in our just reading) hath so fully decided the cause, as if

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it had been exprelly referred to his umperage: The Lord (laith he) hath been witnesse between thee, and the wife of thy youth; against whom thou hast dealt treacherously: Tet is shethy companion, and the wife of thy covenant; (Loe, the wife of thy covenant; (Loe, the wife of thy covenant; therefore too sure setled to be turn doff upon every sleight occasion; what? was thy covenant to take her for thy wife till thou shouldst dislike her? what were this but to mock

firmitude, and perpetuity.)

Therefore take beed to your spirit; and let nonedeal treacherously against the wife of his youth: For the Lord the God of Israel saith that he haveth

God, and the world ! thy covenant implyes no lesse then Cafe 2.

Mal. 2. 14;

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Dec. 4.

putting away; For one covereth violence with his garment, faith the Lord of bosts: Therefore take beed to your spirit that you deal not treacherously. What is this Treachery, which the Prophet cryes out against, thus vehemently thrice over, with a breath; but pretended and unjust suggestions against a lawfull wife for her undue divorce ? and what is that violence, but the injurious execution of those suggestions? upon which unsufficient grounds the Lord professes to hate putting away.

Yea how apparently contrary is this practife to the very originall institution of marriage it selfe? He that made it in paradise ordained

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Cafe 2. Gen. 2, 24.

thus: Therefore shall a man leave his father and his mother and shall cleave unto bis wife; and they two shall be one flesh: Loe before ever there was father, or mother, or fonne in the world, God hath appointed that the bond betwixt husband and wife shall bee more strait and indisfoluble then betwixt the parent, and child; and can any man be so unreasonable as to defend it lawfull, upon some unkind usages, or thwartnesse of difpolition, for a parent to abandon and forfake his child; or the sonne to cast off his parent ? much lesse therefore may it be thus betwixt an husband and wife: They two are one flesh : Behold here an union of Gods making : A

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mans body is not more his owne, then his wives body is his: And will a man be content to part eafily with a peece of himselfe ? Or can we thinke that God will indure an union madeby himfelfe to be fo fleightly diffolved : Or how is this bodily matrimony a lively image of the spirituall marriage betwixt Christ and his Church (who hath faid, I will betroth thee unto me for ever; Yea I will betroth thee unto me in righteowinesse, and in judgement, and in loving kindnesse, and in mercies) if upon small occasions it may be subject to utter dissolution? Yea, what speake I of Divinity? Even modest Heathens would hiffe this Libertinisme

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off the stage: Amongst the rest, what a fool was Socrates? The Oracle, belike, calld him the wifest man of his time; but what a foole was he to indure the unquiet clack of his Xantippe with such coole patience, if he might have quit himselfe of the trouble with a fodaine act of her dismisfion? Or what use was there of those Delegates of Athens and the Harmofyni of Lacedamon for the peecing up of these domestique breaches betwixt husband and wife, if the imperious busband had power to right himselfe by turning the fcold out of doores :

Lattly, what filly countaile was that which the Jewish Rabbi gave to his client, matcht

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matcht with a shrew; The bone that is fallen to thy lot, that doe thou gnaw upon; if it were altogether free for him to leave that bone, and take another?

But I have dwelt too long on fo groffe a fubject : There may yet seeme some better colour for the plea of the Romish Doctors which admit infidelity and herefie into the ranke of those causes whichmay warrant a divorce: But herein the ambiguity of the word (if heed be not taken) may deceive you; The Hebrew text, to which our Saviour alludes, uses a word which fignifies excision, or cutting off; The Greek, a departing away, or putting off, The Latine, Divortium,

Deut 24.1.

Pichion Storagies. t,

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Cafe 2.

in his true sense is not so hainous as either of the other; fignifying rather a turning aside, but in our ordinary acception amounts to no lesse then both. But what unjust difference they make betwixt finall separation and dissolution, we shall finde in our next discourse : Onwards, that such separation may not be made of man and wife (lawfully joined together) for heresie, or mis-beleefe; we need no other conviction then that peremptory and cleare determination of our Saviour which we have formerly infifted on: For though his words on the mount were in a way of doctrinall affertion, yet afterwards, the fame words were used by him, in way

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way of a fatisfactory answer to the Pharises question concerning causes of divorce, professedly resolving that there could be no allowable ground of fuch separation except fornication. What words can be more plaine? It is but a shift to say (as the Cardinall doth) that our Saviour here meant onely to express the proper cause of the separation of married persons, which is the breach of marriage faith: as having no occasion to speake of those generall grounds which reach to the just fundring of all humane focieties; fuch as Herefie and Infidelity; which are enough to unglew all naturall and civill relations betwixt father and sonne, master and servant, huser

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husband and wife: For it is cleare that neither question nor answer were bounded with any particularities; The Pharisee asks, Whether for every canse; Our Saviour an-Iwers ; Fir no cause but fornication; And it is spoken beside the booke, that child or servant should or may forfake parent or master in cafe of Herefie, or Infidelity: S. Paul teacheth other doctrine: Let as many fervants as are under the yoke (of bondage) count their (infidell) masters worshy of all honour; not worthy therefore of defertion, and disclamation: And if the servants may not shake off the bonds of duty; much less may the sonne

breake or file off the bonds of

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1 Tim. 6.

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Dec.4.

nature: and as for the matrimoniall knot, how too sure it is to be loosed by infidelity it selfe, let the Apostle speak; If any brother hath a wife that

1 Cor.7.12

beleeveth not, and she be pleased to dwell with him, let him

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not put her away; And the woman which hath an husband that beleeveth not; and if he be pleased to dwell with her, let her not leave him; And if even Infidelity have not power to dis-oblige the wife or husband, much lesse, Heresie: In this pretended case therefore to separate from board

Mat. 19.6.

presumptuous insolence: It is the peremptory charge of Christ, What God hath joined together, let not man put asunder: In all lawfull marriages,

and bed, is no better then a

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it is God that joines the hands and hearts of the married. How dare man then undoe the worke of God upon devices of his owne. Had the Lord ever faid, If thy wife be a wilfull mif-beleever, rid thy hands of her; this separation were just; but now that his charge is cleane contrary, what an impious saucinesse is it to disjoine those whom God hath united?

As therefore, it is not in the power of any third person, upon any whatsoever pretence, violently to breake the sacred bond of marriage; so neither may the husband, or wife enthrall each other by a wilfull desertion; whether upon pretext of religion, or any secular occasion; In which case

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case what is to be done must come under a further disquifition; Certainly it was never the intention of the holy and wife God, by vertue of that which was ordained for mans comfort, and remedy of fin, to binde him to a remedileffe mifery, which must necessarily fall out, if upon the departure of an unbeleeving, or heretical yokefellow, the relict party must be tyed up to a perperuall necessity of either cotaining, (if he can) or, if he can not, of burning; The wife Doctor of the Gentiles well fore-saw the dangerous inconvenience that must needs hereupon enfue, and hath given order for prevention, accordingly. But if the unbeleeving de-

Cafe 2. 1 Cor.7.15.

part , let him depart ; A brother, or a sister is not under bondage in such cases; but God bath called us to peace: Not, that it is free for a man or woman so forfaken, to carve him, or her-felfe of redreffe (what an infinite confusion would follow upon fuch licentiousness ?) but that after long and patient expectation, and all probable meanes used for the reduction of the party deferting; recourse be had (as to the last refuge) to publique Ecclesiasticall authority (which is the fittest to manage these matrimoniall affaires, in whose power it may be, either by grave admonitions, and just censures to bring back the offender to his duty; or upon his conti-

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Dec.4.

nuing contempt, to set a day for the publication of the just freedome of the forsaken: wherein they shall doe no other then execute that Apostolike sentence for exemption from an unjust bondage, and providing for a just peace.

CASE III.

Whether after a lawfull Divorce for adultery, the innocent party may marry againe.

A Lthough Matrimony be not, according to the Romish tenet, one of those Sacraments which imprint an indeleble Character in the receiver; yet it hath, as they hold,

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hold, such a secret influence upon the soule, as that it leaves a perpetuall bond behinde it, never to be dissolved till death; So as those offenders, which by just cenfure are separated from the board and the bed, cannot yet be freedfrom the bond of marriage: upon this ground it is that they barre the innocent party from the benefit of a fecond marriage, as supposing the obligation of the former, still in force. In the ordinary Bills of the Jewish divorce, the repudiated wife had full scope given her of a second choice; as the words ran: She was to be free, and to have power over her owne foule; to goe away; to be married to any man whom

Milmon. Treat. of Divorce. Dec.4.

the would? They were not more liberall, then our Romish divorcers are niggardly: The Jewish divorce being upon unwarrantable cause, made their liberality so much more finfull, as their divorce was more unjust: for the divorced woman was still in right the lawfull wife of that unrighteous husband that dismissed her; the Romish doctrine makes their straithandednesse so much more injurious, as the cause of separation is more just.

Even this question also is expressly determined by our Saviour in his answer to the Pharisee: Whosoever shall put away his wife except it be for

fornication, and marrieth another, committee hadultery: Lo

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then, he that for so just a cause as fornication putteth

away his wife and marrieth another, committeth not a-

dultery: the exception ma-

nifeftly implies fo much,

both in reason, and common

use : neither indeed, are the words capable of any other

probable sense: That which

Bellarmine would fasten upon it, referring the exception to

the former clause, of dismis-

fion onely, so as it might be lawfull to divorce onely for

fornication, but not to marry after divorce; cannot stand

without a supply of words of

his owne, which God never allow'd him to interfert; and

besides utterly destroies the

fense; casting such a doctrine

upon our Saviour, as he would

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Dec.4.

would hate to owne; for except that restraint be referred to the marrying againe, the sense would run thus, whosoever puts away his wife commits adultery; which stands not with truth or reason: fith it is not the dismission, that is adulterous, but the marriage of another: It is therefore the plaine drift of our Saviour, to teach the Pharisee, that the marriage of a second wife (after difmission of a former, upon any other cause except for fornication) is no lesse then adultery: thereby enforcing, that upon a just dismission for fornication, a second marriage cannot be branded with adultery.

Neither will it serve his turne,

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turne, which he would borrow from S. Augustine, that upon this negative of our Saviours, we may not looke to build an affirmative of our owne; for though it be granted, that he, who putting away his wife not for fornication, and marrieth another, finneth; yet it followes not that he who having dismissed his wife for fornication, marrieth another, sinneth not at all: A fin it may be, though not an adultery: For furely if it be a fin, it must be against a commandement; and if against any commandement, it must be against the seventh; and what is the seventh commandement, but Thou Shalt not commit adultery? Besides, the Pharifees question [Is it

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lawfull for a man to put away his wife for every canse?] was not without a plaine implication of liberty to marry another; which our Saviour well knowing, gives a full answer as well to what he meant, as what he faid; which had not been perfectly fatisfactory, if he had onely determined that one part concerning difmiffion, and not the other concerning marriage: which clause if two other Evangelists expresse not, yet it must be fetcht necessarily, from the third; fince it is a fure and irrefragable rule; That all foure Evangelists makeup one perfect Gospell. It is therefore a very tottering and unfure ground which our Rhemists build upon; as if the

Apostle meant to crosse his Lord, and master, when hee faith. The woman which bath an husband is bound by the law to her bushand, fo long as he liveth; therefore onely death can dissolve the bond of marriage; not divorce, not adultery, not divorce for adultery: For how plainly do the words carry their answer in themselves : The woman (faith the Apostle) that hath an husband: but the woman legally divorced for fornication, hath no husband: S. Paul speakes of a true wife, not a divorced harlot: Hee had no occasion here to look afide at matter of divorce.

but takes marriage as in its entire right; rather desiring Cafe 3.

Rom. 7. 2,

So also 1 Cor.7.

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to urge (for clearing the case T 4 of Dec.4.

of our obligation to the law) that the husband being once dead, the wife is free to marry againe, then to intimate the case of her incapacity to marry till he be dead.

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As for that bond therefore, which is so much stood upon, if it be taken without all relations to the duties of bed, and board; it is meerly Chimericall; nothing fantasie. There are, or should be Bonds of affection; Bonds of mutuall respects, and reciprocall duties betwixt man and wife; and these must hold firme notwithstanding any locall separation; neither time, nor place may fo much as flacken, much lesse loose them : but, where a just divorce intervenes, these bonds

are chopt in peeces, and no Case 3, more are, then if they had never been: And if all relations cease indeath, (as they doe, in whatsoever kinde) furely divorce, being (as it is) no other then a legall death, doth utterly cut off (as the Hebrew terme imports) all former obligations and respects betwixt the parties so finally separated.

The adulterous wife therefore duely divorced being thus dead in law as to her husband, the husband stands now as free as if he had never married: fo as I know not why the Apostle should not as well speake to him as to any other, when he faith : Neverthelesse to avoid fornication, let every man have his

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1 Cor. 7,2.

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Mar. 10.12.

owne wife; Neither is it otherwife in the case of a chast wife after her separation from an adulterous husband; In these rights God makes no difference of sexes; both may lawfully claime the same immunities: which certainly should they be denied to either, must needs draw on very great inconveniences: For in how hard a condition should the innocent party be hereupon left ? Either the husband, or wife must bee forced to live with an adulterous confort; or be tyed to a perpetuall necessity of either doing that (which perhaps they cannot doe) containing, or of suffering that which they ought not to indure, burning. What

Cafe 3.

What remedy now can be expected of so great a mischiefe: Our Romish Doctors propose two; Reconciliation, or Continence: Both good, where they may be had; Reconciliation, in case of a seasonable and submisse repentance: That which is the Apostles charge in case of desertion, holds here also [και ταλλαγήτω] let her be reconciled; the more hainous the wrong is, the more commendable is the remission.

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Continence, after such separation, in case of ability so grated: for surely this holy disposition is a gift; and therefore is not had, where it is not bestowed; those that place it in our power, derogate from the thankes of the giver: yea,

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Dec. 4. Mar. 19.

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he that gives it tells us all cannot receive it: he must not onely give it, but give us power to take it.

But where the offending party is obstinately vicious; and the innocent (after all indevours) unable to containe, without a supply of marriage, the case is remedilesse; and we know Gods mercy such, as that he leaves no man for matter of resolution utterly perplexed.

Shortly then, I doubt not but I may (notwithstanding great authorities to the contrary) safely resolve, that in the case of divorce it is lawfull for the innocent person to marry; But for that I find the *Church of England hitherto somewhat tender in

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the point; and this practife, where it rarely falls, generally held, though not finfull, yet of ill report, and obnoxious to various censures : I should therefore earnestly advise, and exhort those whom it may concerne, carefully, effectually to apply themselves to the fore-mentioned remedies: Reconciliation, if it be possible, to prevent a divorce; Holy indevours of a continued continence, (if it may be obtained) to prevent a second marriage after divorce: But if these prevaile not, I dare not lay a load upon any mans confcience which God hath not burdened; I dare not ensnare those whom God will have free.

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CASEIV.

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Whether the authority of a father may reach fo farre as to command or compell the child to dispose of himselfe in marriage where he shall appoint.

The extent of a paternall power, as we have partly showed already, hath been wont to be very large; reaching in some cases by the Civill law to the life of the child; and by the Jewish law, to his liberty: so as it might seem much more over-ruling in case of mariage; which also seemes to be intimated by the Apostle in that hee supposes, and gives a power to the parent either to give

or keep his virgin: And how apt parents are to make use of this awfull authority in matching their children for their owne worldly advantage, contrary to their affections and disposition, we have too lamentable experience every day; neither is it easie to fet forth the mischievous effects that have followed upon those compelled marriages: for hence ensue perpetuall discontentments to the parties so forcedly conjoined; an utter frustration of the end of marriage, which

should be mutuall comfort: and not seldome, dangerous machinations against the life of the disaffected consort; as it were too easie to instance

every where: but especially, if

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if the affections of the young couple have been before (as it oft falls out) placed elsewhere; what fecret heartburnings; what loathing of conjugall society; what adulterous plottings doe straight follow; what unkinde defiances passe between them? how doe they weare out their dayes in a melancholick pining, and wish each other, and themselves dead too soone? Yea herein an imperious or covetous parent may be most injurious to himself, in robbing himselfe of that comfort which he might receive from a dutifull child in her person, in her posterity: For the avoiding of which mischiefes it were meet and happy, that both parent and child.

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child could both know their Case 4. limits, which God, and nature hath fet, and keep them.

Let the child then know that he is his parents; that as he was once a part of them, in respect of his naturall being, so he should be still in his affections, and obsequiousnesse, and therefore that he ought to labour by all meanes to bring his heart unto a conformity to his parents will and defire according to that universall rule of the Apostle, Children obey your parents in all things; for this is well pleasing unto the Lord: The word is comprehensive, In all things. Things unlawful paffe for unpoffible; we onely can doe, what wee ought; In all those things then

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then which are honest, lawfull, just, parents must be obeyed: And the motions for marriage being such, impose upon the child so farre a duty of obedience as that he is bound to worke his affections what he may, to a compliance with his parents will: the wilfull neglect whereof is no better then a kind of domestique rebellion.

Let the parent againe confider, that the child however derived from his loines,
is now an entire person in
himselse; that though the
body came from him, yet the
foule was from above; that
the soule of his child is endowed with powers, and faculties of its owne; that as
he is not animated by his
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parents spirits, so he is not inwardly swayed by his parents

wardly lwayed by his parents will or affections; that when his reason comes to be improved, there may be differences of judgement betwixt

rences of judgement betwixt his parent and him; and from thence may arise a di-

versity or contrariety of affections and desires; and these affections and passions

may grow to such strength as that he himselfe shall not

be able to master them; and if the parent feele himselfe

fubject to such infirmities, well may he be induced to

pity those whom a vigorous heat of youth hath rendred more headstrong & un-

ruly, withall, let him confider that though the child should

be advised by the parent, yet

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it is fit that he should like for himselfe; that the will is to be led, not driven; that no marriage can be happy, but that which is grounded in love; that love is so altogether voluntary, that it cannot consist with constraint.

Lastly, let him know that the power of the father, though great, yet is not unlimited, It is the charge which the father of mercies hath laid upon all earthly fathers, in their cariage towards their children; Fathers, provoke not your children to wrath. (or (as the Vulgar reades it) to indignation, lest they be discouraged: and furely, if there be any thing, wherein the passion of the child may be like to be inordinately stirred

M) παροςγίζετε, Ephe.6. 4. Μη ερεθίζετε, Colof.3 2. r

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stirred, it is in the crosfing of an once-well-fetled affection; and diverting the streame of love into another channell; For the avoiding whereof the Imperial lawes have been so indulgent to the child; as that (according to their best glosses) they permit not the father to difinherit the daughter for choofing an husband, not unworthy of her selfe, though against her fathers minde; yea some of them have gone a step further : but I forbeare : How far it may be lawfull, and fit for the parent to punish the dis-respect of a child, in so important a case, is not for me to determine; doubtlesse where the provision is arbitrary, the parent will be apt

Case 4.

Dec.4.

apt so to manage it, as to make the child sensible of a disobedience; so as both parts herein suffer, and are put into a way of late repentance.

Briefly therefore, on the one fide the sonne or daughter doe justly offend, if without cause, or wilfully they refuse the parents choice; and are in duty bound to worke their hearts to an obedient subjection to those, unto whom they owe themselves; and for this cause must bee wary in suffering their affections, to over-run their owne reason, and their parents guidance; either suppressing the first motions of unruly pasfions, or if they grow impetuous, venting them betimes into the tender eares of their ina

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indulgent parents, or discreet and faithfull friends; that so they may feafonably prevent their owne misery, and their parents griefe: On the other side the parent shall offend, if holding too hard an hand over the fruit of his owne body, he shall resolve violently to force the childs affections to his owne bent; and where he findes them setled will rather breake, then bow them; not caring so much to perfwade as to compell love: These harshnesses have too much of the Tyran in them, to be incident into a Christian parent; who must transact all these matrimoniall affaires in a smooth and plausible way of consent, and indulgence: A noble and ancient patterne whereDec.4. Gen.24. 49,50,51, 52.&c.

57,58.

whereof we finde in the contract betwixt Isaac and his Rebecca; the match was treated on betwixt Ahrahams proxie, and the maides father Bethuel, and her brother Laban: The circumstances drew their full consent; all is agreed upon betwixt parents; but when all this is done, nothing is done, till Rebecca have given her affent; they said, we will call the damsell, and enquire at her mouth: And they called Rebecca, and said unto her, Wilt thou goe with this man? And she said, I will goe: Now the contract is made up; till then, all the engagements of Bethuel and Laban were but complements; Till then, all the rich Jewells of Gold and filver given

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Cafe 4. Verl. 93.

given to the intended Bride; and all the precious things given to her mother, and brother, were but at the mercy of the receivers; Neither ought it to be other in all Christian espousalls; the free and cheerfull consent of parents and parties makes the match both full, and happy, Let not the child dare to crosse his parents, let not the parent thinke to force the child; and when an undue bargaine is, through the heat of passion, made up past reclamation, let love and pity so far intercede for the offenders, that they may smart for their rashnesse and neglect, without their utter undoing. upon them. The smaine

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Dec.4.

CASE V. shoot

Whether the matriage of Confens-germans that is, of Brothers or fisters children, be lawfull.

The displeasure of the Canon law against such marriages is fo high flowne, that no leffe can take it off then an urter diremption of them even though they be not ratifyed onely, but confummate by carnal knowledge: and the grave authority of some Ancient and holy Fathers, and eminent Doctors of the Churth, (Befides five feverall Councells) have passed an hard fentence upon them. The maine ground of the supposed unlaw-

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Levit. 18.

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Cor.à Lap. in locum.

lawfulnesse, is, that clause of Gods law which was more then judiciall; No man shall approch unto any neare of kin to his flesh to uncover their nakednesse, I am the Lord; which though Cornelias à Lapide (following his Radulphur) would feeme to restrain to the enfuing particularities onely; yet they may not thinke that God will fuffer fo universall a charge to be so Araitly pents especially, when weknow that there are divers other no leffe unlawfull copulations omitted in this black Roll of uncleannelles, then those which are expresby mendohed , the refebeing intended to come in by way of analogy onely: for it is cafe for any reader to obferve.

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ferve, that all the feveralties

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of the degrees prohibited run ftill upon the male; under which, if the like exorbitances of the other fexe were not meant to be comprehended, females should be lawleffe, and the law imperfect, To marry then with a Coufen-german is apprehended by these Canonists to be an approach to ene near kinne to our flofh; and therefore intimated in that inhibition : Doctor Willet (a man much deferving of Gods Church) conceives thefe marriages to be analogically forbidden, in this catalogue of Moles : For, faith he, if the degrees of affinity be limited to the third or fourth degree; as it is not lawfull for a man

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to marry his wives daughters | Cafe 5. daughter (Levit. 18.17.) why should not the line of confanguinity hold to the fourth degree likewise; and so neither the sonne to marry his fathers brothers daughter; or the daughter the fonne? But that worthy Divine did not heedfully observe the great difference betwixt thefe instanced degrees; for the one of these is in an equall lineatheother in an unequall; the one is a collaterall confanguinity, the other is in a directly descending affinity; fo as the husband thould be grandfather in law to thewife, which in all reason were very undawfull, and abfurd; fince in all those descending degrees there is a kinde of reve-

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rentiall inequality betwixt the lower and superiour, which abhorres from all proportion of a match; whereas the collaterall equidistance of consens-german from the stock whence both desend; hath in it no such appearance of inequality. Certainly then no analogy can draw these marriages within the prohibition; whether the nearenesse of approach to our sless be a just barre unto them, must be further considered.

P

Greg.resp. adInterrog. Augustini. q. 6. would faine interesse in our English Apostleship) writing to his Augustine, in way of answer to his Interrogations, puts these marriages in the same rank with the marriages of brothers and sisters, which he

he brands with this note that | Cafe 5. they feldome ever prove mitfull; As for those of prothers and fifters, (which mere ufuall as Diodorus Sienbut tells us) amongst the Eappears, and are this day in ufe imbarbarous nations) natime it felfe abominates the mention of them; In the first plantation of the world there was a necessity of them; as without which there could have been no humane generation; but afterwards, as the earth grow more peopled, to these matches grew fill more odious: like as it was also in the first plantation of the Church; the holy feed, being confined to a narrow compaffe, were forced, unlesse they would joine with In-

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Infidels, to match fometimes over-neare to themselves as even Abraham himfelfe the father of the faithfull married his brothers daugh ter : but when the bounds of men and beleevers came to be enlarged, the greater elbow-roome opened a wider liberty of choice, and now Gods select people found it stance in the elections of their wives fo regarding the cutirenesse of their tribes, as that they fell not within the lines of prohibition, wherein no mention being made of brothers and fifters children, in all ages and nations, some have thought fit to make use of their freedome in this kinde regions Philosophia

Cafe 5. Num. 36.

owne approbation, were married to their fathers brothers fonnes, To mince the matter, and to make these somes, nephewes, according to the Hebrew phrase, (as Doctor Willet indevours to doe) is without either need, or warrant, since these seruples were not since that time stood upon by the Jewish

people: yearhis practife was no leffe current among the civiller heathers of old; I

could rell you of Chemra

(by Ciceroes relation) mairied

of Marcus Antonius the wife and vertuous Philosophers

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Cicorat. pro Cluentio.

marrying his coulen Faustina;
V 5 and

Dec. 4.

Horoman. de grad. cognat. Laurent. Kirchovius profef Roftoch. in confil. Marrimon.

Ambr. ep. ad Paternú 65. and a world of others; were not this labour faved me by the learned lawyer Hotoman, who tells us how univerfall this liberty was of old, as being enacted by the lawes of the Roman; Empire; and descending to the lawes of Fustinian; confidently affirmes that for five hundred yeares, all Christian people (magne confense) allowed and followed these Imperial constitutions concerning Matrimony: Although I might here put him in minde of Theedosius enacting the contrary in his time; as it is like, by S. Ambrofes instigation; who then sharply inveighed against these matches in a vehement epifile to Paternus. being then in hand with a marmarriage betwint his fonne Cafe 5. and his fifters daughter, But excepting that good Emperoun, the coalt was cleare perhaps for the Celarean constitutions; not so for the judgement of Divines; a mongst whom, it were enough that S. Ambrofe, and Si Augustine (che flower of the Latine fathers) if no other, doe bitterly oppose it. This judgement being found not probable onely, but excreding profitable to the Roman See, it is no wonder if it obtained both credit and vigour from thence. Decrees and Decretalls make this inhibition good, not without damning the corrary practife, and now the Civill and Ca hon lawes classing with one 1,0261

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another, how can it be but the prevalence must be according to the power of the abettor ? What liberty the Court of Rome hath taken toit selfe in the restraint of marriages, and upon what ground; all Christendome both sees, and feeles: One while their prohibition reaches to the feventh degree in naturall kindred; then to the fourth: One while the impediment of spirituall cognation, is stretched so far, without any colour of divine authority, as that (what by Baptilme, what by Confirmation) twenty feverall perfons are excluded from the capacity of inter-marriage another while the markeris fain to fourteen. And where. fore

Hodie ecffat fiaternitas & aliqua (x parte compaternitas per concilium Trident. Sess, 21. Navar.e. 21,0.27. fore this? but for the sweet | Case 5.
and scarce valuable gaine of
Dispensations, upon these oc-

casions slowing into the Lateran Treasure: For which

confiderations we have lear-

ned not to attribute too

much to the judgement or

practife of the Roman Cour-

tiers in this point. Upon the

fumming up then of this dif-

course, will you be pleased to

see the vast latitude of dif-

ferent opinions concerning

these marriages? The Canon

law decryes them with such

rigour, as to ordaine them though after a conjugall

conversation) separated;

fome moderate Divines (as,

Doctor Willer) finding this

fentence too bard, goe not for

far; but hold this neareneffe

Para.

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Dec. 4.

of blood a sufficient batte to hinder a marriage contracted though nor confirmate: forme others (as M. Perkins in my conference with him) hold it, though not enlawfull, yet inconvenient; forme others, (as dearned and acure Ma Westen, and M. Atterfoli who hath written a very large discourse in way of vindication of them) hold them both lawfull, and not inexpedient, Horoman yet higher, pium & Christianum effe, qued duarum fororum liberi mairimonie copulentur; that fuch a marriage is pious and Christian: In all this variety if you defire my opinion; I shall neither centure such marriages where they are made, nor yet incomage them 1034

Hotoman, de vita matrimon, p. 6. citante Kirchovio, ut fupra, 0

hem to be made, where they Cafe 5.00 are not : To those that are free I should be apt to suggest counsailes of forbearance; the world is wide, the choice abundant; let it be never fo lawfull, yet how unwife and unsafe were it to put the conscience upon the nicety of a dangerous scruple, when it may keep aloof off, with a cleare freedome, and resolute contentment? That the femarriages are disallowed by fo great authority, should be reason enough to divert the free thoughts to a fafer election : and againe, that thefe marriages are allowed both by Civill lawes, and by the judgement of eminent Dil vines and not any where forbidden either (Fin Coloreo, 31100 19

Dect 4.

ree or Apostolico) by Gods law or Cefuex; Thould be reason enough to beare up the hearts of those who are so matched, from a scrupulous dejection. Let the persons therefore for married enjoy themselves with mutuall complacencie and comfort, not disquieting themselves with needlesse anxicties, Let those single persos who have the world before the look further off, & fasten their affections at a more unquestionable distance: As it was wont to be worthy M. Perkins his expression to this purpofe; Let those who must walke close to the brim of a steep precipice look well to their feet and tread fure, and fo they may come off perhaps as fafely as those that are

are further off; but if a man be to choose his way, let him to cast it, as that he may not approach neare to the brink of danger.

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Case 6.

CASE VI.

Whether is it necessary or requisite there should be a witnessed contrast, or espousals
of the parties to be married,
before the solemnization of
the marriage:

IT is necessary we should distinguish betwixt those things which are essentiall to the very being of marriage, and those which are requisite to the orderly, and well being of it: It may not be denied that the marriage is true and valid, which with full consent of parties is made with-

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Exod.22.

Levit.19.

Deut. 22.

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out the intervention of a previous contract in a due and lawfull forme prescribed by the Church : but it is no leffe true that fuch a marriage is very unmeet, and liable to just exceptions: That God, who is the author and inftitutor of marriage made a difference in his law, betwixt a betrothing, and a matrimony, he that ordained the one, ordained the other alfo ; and ordained the one in order to the other: And this was constantly observed in the practife of Gods ancient people accordingly: so we finde the bleffed virgin espoused to Folgsh before his taking her

to wife, neither did the Christian Church thinke fit to vary from so holy a patterne;

where-

23. 28. Jer. 2, 2.

Compare Mat.1. 18. with Deut. 22.13.

whereto S. Paul alludes, when writing to and of the Church of Coninch, (which he had happily planted, and forwarded in grace) he faith, I have efpoused you to one hasband, that I may prefent you as a chaft virgin to Christ; Loc he hath betrothed them to Christ in that he had entred them into a Covenant of grace, and prepared their foules for a full confummation of their bleffed union with Christ in glory, incimating (as matrimony is a lively refemblance of our spirituall conjunction with the Lord of glory) that our bodily espoufalls here below, are they which must make way for a complete marriage enfuing : It were not difficult, if it -MYANOUL were

Cafe 6.
Magdeburg. Cent.
2. de Conjugio.
2. Cor.11.2.

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Concil.

Anciran.

were needfull, to deduce this holy practife downe from the primitive times to the prefent: Before the Nicene Councell we finde the Synod of Ancyra enjoining a fevere penance to the man that should defile his body by an incestuous copulation, after espousfalls contracted: And the Councell of Eliveris or Granado, about the time of the Nicene convention, takes such notice of these betrotherings as that it decreed, that

Concil. Eliv.c.45.

Luitbrand iu Syric.

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SCECE

space of three yeares from the Communion. What should I trouble you with the Decree of Syracius con-

if any parents should breaker

the faith mutually engaged in these ofpoulalls, they should be held off during the

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cerning these contracts; or | Case 6. with the pregnant testimonies of S. Chryfostom and Ambrose to this purpose; which were but to wast time and paper upon so cleare a Truth: Asthere was no Chri-Rian Church which did not carefully observe this sacred rite: fo above all other the Roman hath been at least curious enough in calling for a first and severe account of their espoulalls what voluminous discourses, what a world of nice questions have fallen from the pennes of their Canonists, and Casuists concerning this fubjecte Certainly this is a point of fo much use and agitation amongst them, that were it not for the quarrells arising here-

Dec.4.

here-from, it is to be feared their confiftories would want worke, and their Advocates imployment: But to speake ingenuously, those of the Romanclientele are not more carefull and punctuall in scanning, and observing the rules and practise of their espoufalls, then ours here, are incurious of both : How many have we heard to fay, they will make no promise of themselves till they come to the Church-dore e and of those that doe contract themselves, how weakly and infufficiently is it performed on many hands ? so as their act, if questioned, is no way obliging a nor fuch as upon the least discontent mill indure a contestation. of 100 Now,

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Case 6.

double contract, or espoufall, the one of the future; the other of the present that of the present, if it be expressed in full termes, differs nothing from marriage it selfe, save onely in the publique solemnization, which doubtlesse is a ceremony so requisite, as that without it an horvible consusion must needs sollow both in Church, and States

That of the future, is a mutual engagement of both parties that they will marry each other; which is most properly an espousal contract; giving both assurance to each other of a mutual consent to a matrimony that shall be, and yet withall some meet

Dec.4.

meet respiration of a more full triall, and inquiry into each others condition: For which purpose the wisdome of the Church hath ordained that there should bee a solemne publication of that more private Contract three severall Sabbaths, to the whole Congregation; not without the earnest charge of a discovery of whatsoever impediment might justly hinder the intended matrimony.

The frequent, but unfit, use of these Espousall contracts in the Roman Church, betwixt their children in minority (allowing seven yeares in either party for a meet age to this purpose) must needs breed both much question, and

Ætas legitime contrabendi matrimonium.est in masculis 14 annes. in faminis 12; Spon-Calibus autem contrabendis, Septem in utrifque. Navar.c. 22, n. 28.

Cafe 60

and inconvenience; but in those which are of a mature age, and therefore able to judge of what may be most expedient for themselves, this institution cannot be but fingularly utefull and beneficiall: For neither is it meet that fo great a worke, and fo highly importing us as matrimony, should be rashly and fuddainly undertaken; neither doth it a little conduce to our fafety, that fince marriage once passed, is irreverfible, we may have fome breathing-time betwixt our promise, and accomplishment our selves to informe throughly, before it be too late, what we must trust to for ever. For we may take notice that though marriage

is indiffeluble, yet these esponsals, or contracts of a future marriage, are not so many things may intervene betwixt this engagement by promise, and that full and compleate solemnization, which may breake off the match.

The Calinfts determine of feventeen severall cases; at the least, which may fort to this effect; some whereof have a proper relation to the Romish religion; others are common to what ever contracts of this kind; I shall not grudge you the mention of them all. An espoulall-contract therefore may (according to their judgement) be broken off.

By the willing remission

of

Cafe 6.

of both parts, although it had been feconded by an oath: By the entrance of the one party into some order of religion: By a contract with forne other in words of the prefent : By the travalle of one of the parties into remore countries and not teturning upon a lawfull furnmons at a time prefixed by the Judge: By an affinity Supervening upon the finfull eopulation of one of the parties with the neare kinfwoman of the other : By the abfolution of the Judge upon full of one of the parties repenting and pleading minority: By aple of the time fet for the accomplishment of the marriage by the difeate of one of the parties being fallen X 2

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len into palfie, leprofie, the Neapolitan fickneffe, or any other contagious diffemper, or notable deformity: By the fornication of one of the parties committed fince the contract By a vow of chafting ty preceding the contract s By fome eapirall enmity intenvering betwiet the families and persons of the contracted by the omiffien of performing the promised conditions swas when the dowry agreed upon; is wetracted, or held off: By the fame of a Canonical impediment, By susception of Orders after contract; By the supervention of a legal kindred, inexpected; By the haidmelle and afperity of disposition in either party: And

Cafe 6:

And (which may comprise many other particularities) by the falling out and difcovery of any such accident, or event, as if it had been fooner knowne would have prevented the making of fuch a contract; All thele, fay they, may barre a marriage after espousalls : but yet so, as that the parties may not be their owne arbiters, to break off their contracts at plcafure, but must have recourse to the Judge Ecclesiafticall; and fubmit themselves to the over-ruling sentence of the Church.

are proper to the Romish superstition, yet you shall finde many just and allowable causes which may (after a

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Dec. 4

contract of espousall) interrupt a purpoled matrimony: fo as, if there were neither rule, nor example of any fuch preceding engagement, yet furely, it were very fit for our owne fecurity, and our confident and comfortable entrance into that estate which we shall never put off, to obferve carefully this previous betrophing of our felves, ere we knie the knoo that can neverbe loofed a nomunitui perfection of Paradifficulare can bend have where whav be unlawfulleto celebrateurs yet shere may be times ward it is units. There is the like reason of times and places shown of shiets are aircumilances alikely The door of the marriage-bed not one-

of Confeience resolveds Des ale contract of cloonfall) in the contract of cloonfall and contract of co Whither there aught to be a prohibition and forbearance sof marriages, and marriage duties for fome appointed ownerfecurity, and onimitafident and comfortable en-Tis one thing what is law full another thing what is fit and expedients as to Paul hath taught us to diffinguish: marriage being of Godsown institution, and that in the perfection of Paradife, there can be no time wherein it may be unlawfull to celebrate it yet there may be times wherein it is unfit: There is the like reason of times and places; both of them are circumstances alike; The debt of the marriage-bed not one? X 4

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Dec. 4.

Maimon, Shicard, de Reg.

E Cor. 7.5.

ly may, but must be paid by them whom God hath called sorthan estand, yearthere are places, wherein it were barbarous and piacular to defrayit : even, befides shofe places which are destinted to an holy use, the Jewes of old held this act done in the field or under a tree, worthwof feourging Doubtleffe there are times to wholly confecrated to devotion, as that therein it would be ucterly unscasonable to lecoour thoughts loofe to the most lawful pleafures: Hence is that charge of the Apostie, Deb frand not one the other, exceptit be with consent for the time, that ye may give your selves to fasting and prayer: So then as Solomon himfelfe

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can lay, There is a sime to em! | Cafe 7. bace, and a time viewe fraine from embracing a But what the limitation of this time may be no finall question hath been raifed in the Church of God: neither doe there want extremities on both fides : The Church of Rome hath heretofore been exceffively large in her prohibitions, forbidding the folemnization of marriage up on pretence of the holineffe of the great feafts to be obferved; for the whole third part of the yeare; neither doth the account fall leffe, if we reckon from the Advent to the Epiphany; from Septuagefima Sunday to the Octaves of Eafter and from three dayes before the Afcenfion

Ecclus.3.5.

Shicard 29.8 3b

fion to the Octaves of Pentecoles all which had wont to be strictly kept, belides thefeast of S. John Baptist added by fome, and the four Ember weekes by others but now of late upon fecond thoughts, their Councell of thorten the relevaint, and

Concil. Trid. Seff. Trem have found it meet to fomewhat to enlarge the liberty of the seasons for marriage, having exempted the two only solemne feasts of Easter and the Nativity, and abridged fome previous weekes of the former: and for us how observant our Confistories had wont to be of those inhibitions for their owne gaine, every Almanack can witnesse. Some worthy

Divines in our Church did

not

not stick to professe their Case? of Rome, to the scandall of the Reformed : Concerning both which, I must fay that feither we or they doe put any holinesse in the time exempted, or any unholinefic in the actinhibited we cannor be excused from superstition ; Can any time be more holy then Gods owne day: yet on that day we doe commonly both publish marriages, and celebrate them. But if, as in some solemne Affs, indicted by the Church for forme publique humiliation, we both doe, and injoine to abstaine from all conjugall fociety; fo in a defire the more devoutly to celebrate the

the memory of Gods infinite mercy to mankinde in fending a Saviour into the world for our Redemption, and of the glorious refurrection of that Sonne of God for our justification, we shall take off our selves from all worldly cares or delights, I see not

why it should not be both

lawfull, and commendable.

But, to fay as it is, as the Romanists are guilty of too much scruple in this kinde, so too many of our owne are no lesse faulty in a carelesse dis-regard of the holiest occasions of restraint; which I would to God it did not roo palpably appeare in the scandalous carnality of many (otherwise inosfensive) professors. It is a common practice (which

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(which I havelong with an opportunity to censure) that husbands and wives forget one another too foone Scarce are their conforts fully cold, erothey are laying for a fer cond match; and too few moneths are enow for the confummation of it. Let me be bold to fay, this haft hath in it too much not immodefty onely, but inhumanity: If we looke abroad into the world, we shall finde not among Gods peculiar people only, but even amongs the very heathens, a meet (and not niggardly) intermiffion betwist the decease of the one husband, or wife, and the marriage of another: A whole yeare was found litthe enough for the wife to mourne

Dec. 4.
Alexab,
Alex.l.3.
Gen.dier.
C. 7.
Cod.l.2.
tit.12.

Asappeares by comparing of Gen. 23.2. with 2 & 1.

לביקות Gen.23, 2.

Gen. 24.

mourne for her husband departed; and so is still amongst the very Chineses, though Atheous Pagans; And by the civill Lawes, a woman marrying within a yeare after her husbands death is counted infamous.

Ir was no fhort time that Abraham (though nowvery old) breathed upon the death of Sara, (the first of wives mencioned as mourned for) before he tooke Keturah, and yet the Hebrew Doctors obferve that there is a thort letter in the midst of that word which fignifies his mourning; to imply (fay they) that his mourning was but moderate: Lam fure his fonne Ifaat was not comforted concerning the death of that his good mother,

c: A

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mother, till three yeares af-Cafe 7. ar her deceale. At which time he brought his Rebecca into that tent which even still retained the name of Saraha whereas with us, after the profession of the greatest dearenesse, the old poste of the deaths-ring tells us what we may trust to 3 Dead and forgetten: Who can but blufh to read that some Heathens were faine to make lawes that the wife might not be allowed to continue her solemne mourning for her husband above tenne moneths; and to fee that our women had need of a law to inforce them to to mourne for the space of one :

other Reformed Churches there is a determi-

E 3 323 -somos vel Dec. 4.

minate time of moneths fet. untill the expiration whereof widowes, (especially the younger) are not suffered to marry, it were more then requifite that these loofe times were, here with us, curbed with fo feafonable a Constitution; but it were yet more happy, if a due regard of publique honesty; and Christian modesty could set bounds to our inordinate defires, and so moderate our affections, that the world may fee we are led by a better guide then appetite. hat facred inflication, yet

et it in a key lower

ters agency in the perfort

29 and miner view of money Cafe 8,00

OASEN HELLING
Whether it be necessary that
marriages should be celebrated by a Minister, and
whether they may be valid,
and lawfull without him.

Prois no marvell if the Church of Rome (which holds matrimony a Sacrament, conferring Grace by the very worke wrought) require an absolute necessity of the Priefts hand in so holy an act; but for us, who (though reverently efteeming that facred institution, yet) fet it in a key lower, it admits of too much question whether we need to fland upon the termes of a Ministers agency in the performance

Dec.4

mance of that folemne action: There are those in these wild times that have held in fufficiently lawfull for the parties having agreed upon the bargaine before friends and witnesses, to betake themselves to bed : others, have thought this act of conjoins ing the married persons in wedlock a firter act for the Magistrate to undertake. And certainly, if there were nothing in marriage but mere nature, it could not be amiffe that men and women should upon their mutuall agree ment couple themselves to gether after the manner of brute creatures; And if there were nothing in marriage but meere civility, the Magistrate might be meet to be othere im-

imployed in this service: But Case 8, now that we Christians know matrimony to be an holy institution of God himselfes which he not onely ordained; but actually celebrated betwixt the first Innocent paire, and which, being for the propagation of an holy feed, requires a speciall benediction; how can we in reason thinke any man meet for this office, but the man of God, fee over us in the Lord , to derive the bleffings of heaven upon our heads? From hence therefore have our wholfome lawes taken a just him to appropriare this service to a lawfull Minister onely : so as what ever private contract may be transacted in corners betwixe the parties affected to each other, -1111

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other, yet the marriage-knot cannot be publiquely knit by any other hand, then Gods Ministers. And herein certain ly we have just cause to blesse the wisedome both of the Church and State, which hath to regulated these may trimoniall affaires; as that they are not onely orderly but fafely managed: For doubtleffe were not this provision carefully made, the world would be quite over run with beaftlineffe, and horrible confusion: And in this point we may well give the Church of Rome her due! and acknowledge the wife care of her Lateran and Tridenrine Councells, which have enacted fo strict Decrees against Clandestine marriages,

Cafe 8.

ges, and have taken fo fevere course for the resonning of many foul diforders in these matrimoniall proceedings as may be of good use for the Christian world: Had they done the like in other cases, their light had not gone out ha foutter As therefore it is generally both decreed and observed (not without excellent reason) in all Christian Churches, that marriages should be solemnized in the publique Congregation of Gods people, fo it cannot but be requifice that it should be done by him, who is or dained to be the mouth of the Congregation to God; and the mouth of God to the Congregation, And, as under the Law, the Priest was the

Divers practicali Cafes

Dec.4.

the man, who must conveigh bleffings from God to his people, fo under the Gospell who can be fo apt for this divine office, as he that ferves at the Evangelicall altare And if all our marriages mult be(according to the Apostles charge) made in the Lord, who is to meet to pronounce Gods ratification of our marriages, as he who is the profelt Herald of the Almighty? As it is therefore requifite (even according to the Roman Constitutions) that he who is betrufted with the Cure of our foules, flould befides other winneffes bee both prefent and active in, and at our domenique contracts of matrimony for by the laws both of our Church and

Cafe 9.

and Kingdome, it is necessary he should have his hand in the publique celebration of them. There may then be some contracts, there cannot be lawfull marriages without Gods ministers.

CASE IX.

Whether there be any necessity on use of thrice publishing
the contract of marriage in
the Congregation, before
the Celebration of it; and
whether it be sit that any
dispensation should be gransed for the forbearance of it.

There were amongst the Jewes certaine ceremoniall Observations (besides the Precepts) which they called the Hedge of the law; and such there cannot want

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defied memory, in the yeare 603. to this purpose; with Arich charges, restrictions, nd cautions, as the wir of man could in this case devise; and the late Directory hath ound cause to second so usefull and laudable a Constintion: For the convenience, f not necessity, whereof, we néed no other argument then the grievous mischiefes that have followed upon the negled of this ordinance; that one were enough, which is instanced by the Tridentine Synod it felfe; that some leud persons having secretly married themselves to one, take liberty to leave that match, and publiquely joine themselves to another, with whom they live wickedly in

Concil. Trid. ubi fupra.

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a perpetuall adultery; the frequent practife whereof in those horter climats we may cafily believe; when we fee that in our owne more temperate region, the feare of hanging cannot hold some offfrom so foule a sin. Let me adde hereunto the late experiments of some odious incestuous marriages, which (even by the relation pa of our Diurnalists) have by th this meanes found a damnable passage, to the great difhonour of God, and shame mi of this Church; And here- A upon the fad iffues of stolne on marriages, wherein parents de have been most feloniously to robbed of their children, are co too feelingly knowne, and be irrecoverably lamented: But | ou te

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as for unfitneffe and inequality of matches, both for age, and condition, (to the too late repentance and utter undoing of both parties) they are fo ordinary, that they are every daies Occurrences: And all these evills have sensibly growne from the want of these publique Denuntiations of Bannes; partly upon the unhappy throwing open of the fence of discipline, and partly upon the furreption of fecretlymif-gotten dispensations; And though that forementioned Synod of ours, seconded by Royall anthority, tooke the most probable course that could be conceived (the liberry of those Faoutries being continued) for

Constit. and Canons ut supra, Can. 101,102, 103.

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Divers practicall Cafes

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the preventing of these abufes; as the restraint of the grant of them by any other, fave those who have Episcopall authority; and fecurity to be given upon good bonds that the coast is cleare from all precontracts, fuits of law. and prohibited degrees; that the full consent of parents or Guardians is had; that the marriage shall be celebrated in the parish Church where one of the parties dwelleth, and laftly the oathes required of two fufficient witnesses (one whereof knowne to the Judge) that the expresse consent of parents or Guardians goes along with the match intended; and that there is no impediment from any precontract, kindred, or alliance:

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yet notwithstanding all this prudent caution we have by wofull experience found our offices cheated, faculties corruptly procured, and matches illegally struck up contrary to the pretended conditions: Whereas all this mischiefe might have been avoided, if as no marriage may be allowed but publique; so those publique marriages might not be celebrated but after thrice publication of the contract in both the parish Churches where the perfons contracted are knowne to inhabite: For so both the Parents of either fide cannot but be acquainted with the ingagements of their children; and if there be any just hindrance, either by precon-

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tract, or by proximity of blood, or affinity, it cannot be concealed; that fo the snare of either an unlawfull or prejudiciall matrimony was be feafonably eschewed: To this good purpose therefore it is no lesse then necessary (as I humbly conceive) to be both enacted and observed, that no marriage should be allowed of any person whatsoever (except perhaps the Peers of the Realme, who are supposed to be famously known through the Kingdome) without a folemne publication of their contracts at three severall meetings to the Congregation assembled; and that there may no difpensation at all be granted to the contrary upon any whatof

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whatsoever conditions: And if some pretend bashfulnesse, others feare of malicious prevention (as the Tridentine Doctors suggest) yet it is fit that both should vaile to the inevitable danger of those mischievous inconveniences, which follow upon these clandestine matches, and silent dispensations.

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CASELXIOI 20 01

Whether marriages once made may be annulled, and atterly woided; and in what cases this may bee done.

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IN what onely case a divorce may be made after a lawfull marriage, you have seen before; now you inquire of the annulling or voiding of marriages made unlawfully: which doubtlesse may be done by just authority upon divers wellgrounded occasions: For as it is an indispensable charge, Those whom God bath joined together let no man put asunder; so it no lesse truly holds on the contrary; Those whom

Cafe 10

whom God hath forbidden to be joined, let no man keep together.

Our Casuists are wont to be very copious in this subject, distinguishing betwixt those Impediments which may hinder a marriage from being made, and those which may undoe and void the marriage once made. They infift upon many particularities of both kindes; and some perhaps too many: I shall instance onely in those of the latter fort which are unquestionable; whereof the first shall be a mil prison of the match; when one party is mittaken for another; as when he who by a full contract confented to marry with Anne, is by a fraudulent fub490

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fubstitution put upon a marriage with Mary; whether upon the likenesse of the women, or the want of a discerning sense in the man; or by some cunning conveyance of the perfidious contrivers; Forcertainly, it is the confent that makes the marriage; and if the hearts be not joined together by mutuall agreement and affection, the coupling of the hands is but a ceremony utterly ineffectuall: I doubt not but it was in Facebs power to have difavowed the match with Leah, whom his father in law had deceitfully obtruded upon him, being more injurious in changing his wife, then in ten-times changing his wages; fince his

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his heart was not accessary to that match, which the darkenesse of the night, and the suttlety of a Laban had drawne him into.

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The like case is in the marrying a bond-woman in stead of a free; a base plebeian in stead of a person of honour: As then we use to say that mis reckoning is no payment, so we may well affirme that a mis-marriage is no true wedlock; and therefore justly to be branded with a nullity.

A second may be the feedity and unnaturalnesse of the match; when the parties incestuously marry within the first collaterall degree, of Brothers and sisters; the very mention whereof, even

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Martin Alphonf. Vivald. Candelab. aureú. de matrim.& partic.de Confanguin.

Scorm.4. d.40.Sot. ibid.q. un. art.4.

even nature it selfe, not depraved, abhorres: fo as I cannot but wonder that the Roman Schoole should bee much divided in this point, whiles Bonaventure, Richardus, and Durand hold fuch a marriage even by divine law, a nullity; contrarily Aquinas, Cajetan, Thomas de Argentina and others (whom Covarravias recites) defend this to be onely an impediment by the Canon law, and therefore that it may bee in the Popes power to dispense with so foule a matrimony; Against whom upon better reason, Scotus, and Dominious à Soto prove fuch marriages by the law of nature to be utterly void and null; with whom all in-

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ingenuous Christians cannot but willingly concurre in their judgments.

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A third may be the horriblenesse of a crime committed in the way to a wicked match; and that of two forts: the one of murther, the other of adultery: The former, when the wife hath conspired with the adulteter to murther her husband, with an intent to marry the murtherer; or in the like case the husband to murther the wife.

The latter, when a man living in a knowne adultery with another mans wife, contracts matrimony with the adulteresse in the life time of her husband.

A fourth is the indiffoluble

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luble knot of marriage with a former still furviving husband or wife; the force whereof is fuch, as that it frustrates and voideth any supervening matrimony, (except in the case specified in the foregoing discourse of Divorce) during the naturall life of the conforts. Many unhappy, and perplexed cases have we met withall in this kinde; neither doth it seldome fall out, that the husband being confidently reported for dead in the warres, or in travell abroad; the wife after some yeares stay, and diligent inquisition, finding the rumour Arongly verified by credible testimonies, and tendered oathes, begins to listen to some earnest

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earnest suitor; and bestowes her selfe in a second marriage; not long after which, her onely true, revived husband returnes, and challengeth his right in that his lawfull wife; pretending the mif-carriage of letters and messages sent by him in that forced absence. In this case what is to be done? The woman hath cast her felfe upon the danger of a Capitall law, except she have expected the time limited by statute; or if she escape, one of the husbands is to feeke for a wife, whom both may not enjoy: Doubtlesse the second marriage, is by Ecclefiafticall authority to be pronounced, as it is, mull; which indeed never had Dec. 4.

had any true right to bee and the first must be content to swallow its owne inconveniences.

A fifth may bee a violent enforcement of the match; when a woman is upon feare of paine, or death compelled to yeeld her felfe in marriage, and is not perfivaded, but affrighted into the bonds of wedlock: furely this is rather a rape then a matrimony, and therefore, upon utter want of confent, a nullity.

A fixt may be a preceding, irremediable impotency, or incapacity of marriage duties; whether naturall, or adventitious; whether by way of perpetuall maleficiation, or eafualty:

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I fay, preceding, for if any fuch disability be subsequent to the marriage, the nullity is avoided; But if the persons finde in themselves before hand fuch remedileffe incapability of a marriage estate, they shall be highly injurious to each other, and shall foulely abuse the ordinance of God in their entring into fuch a condition: For it is apparent, that the maine ends of marriage are herein utterfrustrate; which were by Gods appointment, the propagation of mankinde, and the remedy of incontinency; neither of which being atraineable in such a defective estate of body, justly is such a match proDec.4.

pronounced a nullity.

But here I cannot but take occasion to commend the modesty of the women of our nation; amongst whom, there are so rare examples of fuires in this kinde, prosecuted in our Ecclefiafticall Confiftories; it is not to be doubted but there are many defects of this nature to be found every where, yet scarce one in an age offers to complaine, and call for redreffe: fo as it feemes they are willing to smother all secret deficiencies, in a bashfull silence; whereas those of other warmer regions impatient of the wrongs of their conjugall disappointments, fly out into open contestations, and feare-

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fearelesly seek for those remedies, which the lawes provided in fuch cases will allow them. Certainly the merit of this modest temper is so much the greater, by how much more it is concealed from the world; and those of either fexe that are content to bite in their hidden grievances of this kinde, are worthy of double honour from those conforts, whose injurious infirmities they both have not disclosed, and suffer in suppressing.

ERRATA.

Page 7. line 1. for Tinne read time, page 17. line 17. for marke read market. page 301. l. 1. for darting r. daring.

FINIS.

OCTOB.9. 1648.

T Have perused these foure Decades of Practicall Cases of Conscience with much satisfaction and delight, and finde them to be in respect of their subject matter so profitable, necessary and daily usefull; and so piously learnedly & judiciously discussed and resolved, that they seem unto me best though they come laft, (like the Wine in the marriage feast made facred by Christs divine presence and miracle) and therefore do well deserve (amongst many other the divine dishes and delicacies wherewith this right reverend, pious and learned author, hath plenteoully furnished a featt for the spirituall nourishment and comfortable refreshing of Gods guests) both the approbation and commendation of all, and my felfe among the rest, though unworthy to passe my censure on such a subject. John Downame

OCTOR 9, 1648.

If theye peruled thefe foure De-Leades of Practicall Cafes of Confrience with much farisfiedison and deticht, and finde them to be in respect of their fibelets matter fo profitable, necessary and daily alefull; and to piously learnedly & judicically discussed and refolsed, that they feein unto aid both though they come int (like the Wint of the martheretest made lacined by Chrifts dwine prefence and miracle) and energiare do well deferve (amonest many other the divine diffee and delicaties wherewith Permed motion, high pleaseduffy furnified a fealt for the Spiricuall nourilbment and comfortable tetrellians of Gods swells) both -manmos bus norseddagg ada dance of allend my felte among the tell, though insworthy co paide my centure on tuck a (Doject. John Downance